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FILED
JUN 25 1969
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 280

CITY OF DETROIT, a municipal corporation,
BOARD OF ASSESSORS OF THE CITY OF DETROIT,
Petitioners-Plaintiffs,
MICHIGAN STATE TAX COMMISSION,
Appellant,
v.
AMBASSADOR STEEL COMPANY,
a Michigan corporation,
ADVANCE STEEL COMPANY,
a Michigan corporation,
AMERICAN STEEL CORPORATION,
a Michigan corporation,
BARSTEEL CORPORATION,
a Michigan corporation,
CONTRACTORS STEEL COMPANY,
a Michigan corporation,
CRAFT STEEL & SUPPLY COMPANY, INC.,
a Michigan corporation,
EWALD STEEL COMPANY,
a Michigan corporation,
KASLE STEEL CORPORATION,
a Michigan corporation,
KENWAL PRODUCTS CORPORATION,
a Michigan corporation,
PARAGON STEEL CORPORATION,
a Michigan corporation,
TITAN STEEL COMPANY,
a Michigan corporation,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO MICHIGAN COURT OF APPEALS, DIVISION 1 AND APPENDIX

(For Attorneys, See Inside Front Cover)

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PETITION FOR WRIT OF CERTIORARI TO MICHIGAN COURT OF APPEALS, DIVISION 1 AND APPENDIX

To: The Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners-Plaintiffs pray that a writ of certiorari issue to review the judgment of the Michigan Court of Appeals, Division I, entered in the above-entitled consolidated cases on December 2, 1968.

A. OPINIONS BELOW

The opinion of the Michigan Court of Appeals, Appendix A, an appellate court of said State appears in 165 N.W. 2d 875 (1968). The earlier opinion of Michigan State Tax Commission dated February 1, 1967, is unreported and is printed in Appendix B attached hereto. Denial of application for timely leave to appeal to Michigan Supreme Court was issued March 20, 1969, as indicated in 165 N.W. 2d 875 (1968).

B. JURISDICTION

(1) Involved herein are appeals from the Court of Appeals which vacated certain assessments placed on Detroit's 1966 personal property rolls by the Michigan State Tax Commission against taxpayers alleging that they were importers of foreign steel held in original packages for resale and claiming to be entitled to immunity from taxation thereof by virtue of Article I, Sec. 10, Cl. 2 of Constitution of United States. Upon denial of their contentions, 11 respective respondents took appeals to Michigan Court of Appeals. Their cases were consolidated, arguments heard on the same day and disposed of by one opinion which reversed the determinations of the Michigan State Tax Commission on December 2, 1968.

A timely application for leave to appeal filed with Michigan Supreme Court by petitioners was denied March 20, 1969.

(2) Jurisdiction of this Court to issue writ of certiorari is invoked under C. 646, 62 Stat. 929 (28 U.S.C.A. 1257(3)). The constitutional immunity issue raised being applicable to all, this petition is intended to apply to the several cases consolidated below in conformance with Rule 23 (5).

C. QUESTIONS PRESENTED FOR REVIEW

The following questions are presented for review:

Under its finding of facts that respondents (steel wholesalers) contracted for purchase of steel with domestic based companies acting as principals and not as agents, was a grant of immunity by the Michigan Court of Appeals from local *ad valorem* non-discriminatory personal property taxes inconsistent with decisions of this Court construing the Import-Export clause of the United States Constitution (Article I, Sec. 10, Cl. 2)?

Under its finding of facts that the domestic companies entered into separate and distinct contracts with the foreign sellers of such steel and not as agents or for their account, did the Court of Appeals err in its ruling that respondents were entitled to immunity on the rationale of Hooven and Allison?

Under the acknowledged facts that respondents purchased such steel from domestic companies for resale and not to obtain material to be manufactured by them, did the Michigan Court of Appeals unduly extend the role of im-

porter in the constitutional sense both to these respondents and to said domestic companies directly and proximately causing importation?

The Court of Appeals said "No" to all three questions.

D. CONSTITUTIONAL PROVISION INVOLVED, ETC.

The provision in Article I, Sec. 10, Cl. 2 of the United States Constitution reads as follows:

> "No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws; and the net Produce of all Duties and Imports, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress."

Statutory provisions applicable to assessments which provide a basis for the personal property taxes herein are referred to below. Being too lengthy to set forth in full, the pertinent text appears in Appendix C attached hereto.

E. STATEMENT OF THE CASE

Consolidatd here for review are eleven matters heard separately on petitions by petitioners-plaintiffs to Michigan State Tax Commission in 1966. These requested that increased assessments be placed on Detroit's 1966 personal property rolls against each of said respondents as said Tax Commission was statutorily empowered to do. The issue, common to all cases, was assessability of inventories of

foreign steel of the respective respondents. They contended that they were importers and claimed immunity of their inventories of such steel held in the original package for resale both at the administrative level and before the State courts by virtue of Article I, Sec. 10, Cl. 2 of Constitution of the United States.

The Tax Commission concluded that the burden of proof rested on respondents and they had failed to prove said claims of immunity because of doubts that these were imports based on documents and exhibits in evidence and because there is a presumption that property is taxable unless it clearly appears that immunity is granted by constitutional provisions or statutes. (App. B, p. 21)

Increases of assessments resulting from determinations of Tax Commission totalled in the aggregate $2,244,990.

Personal property assessments under Michigan law are *ad valorem* in nature. Taxes levied against respondents based on said assessments were non-discriminatory, i.e., the procedures to value these inventories of steel of foreign origin and the rates of taxation were the same as in the case of inventories of any tangible personal property of domestic origin in Detroit in 1966. (App. C)

After obtaining leave to appeal from their increased assessments respondents' cases were consolidated, heard and disposed of as one by Michigan Court of Appeals Division I, consisting of T. G. Kavanagh, P.J., Burns and Fitzgerald, J.J. A single opinion was issued by which the several determinations of the Tax Commission were reversed on December 2, 1968, 165 N.W. 2d 875. Respondents were found entitled to immunity from taxation. The Court's opinion concluded that their transactions in these cases fell within the scope of the decision in *Hooven and Allison v. Evatt* (1945), 324 U.S. 652.

Timely application to appeal to the Michigan Supreme Court was taken by petitioners for the purpose of exhausting their state remedies. An order denying leave was issued March 20, 1969, which left standing the decision below.

The respective records and transcripts of hearings having been returned to the Michigan Court of Appeals, request has been made to the Clerk of the latter for certification of same to this Court.

(a) Federal Questions Raised Below

The constitutional immunity questions based on Article I, Sec. 10, Cl. 2 of the Constitution of the United States were timely and properly raised at the following stages:

Before the State Tax Commission (App. B). (See paragraph numbered 2 of findings of the Commission.)

Before Michigan Court of Appeals (165 N.W. 2d 875, at p. 876) (App. A).

Said constitutional immunity was denied by the Tax Commission and later sustained by Michigan Court of Appeals when its decision reversed the several orders of the Tax Commission.

F. WHAT THIS CASE DOES NOT INVOLVE

The facts presented in these appeals are distinguished in that the assessments do not involve steel brought into the United States

(1) by purchase directly by respondents from a foreign producer or supplier;

(2) by purchase by respondents through a domestic broker acting as agent for or for the account of a designated foreign producer or supplier; nor

(3) for the purpose of supplying any of these respondents with raw material to be manufactured into a finished product in its own plant.

G. REASONS FOR GRANTING THE WRIT

(a) Pending Litigation

The issues involved in the eleven cases presented for review with respect to 1966 personal property taxes are also involved in approximately fifty actions subsequently filed in the Wayne County Circuit Court for the years 1967 and 1968. The amounts of taxes now being challenged annually are in greater amounts due to the ever increasing volume of foreign goods arriving in ports on the Great Lakes from overseas and claimed immune under the import-export clause.

The determinations of Tax Commission increased assessments for 1966 against the several respondents from $3,065,810 to $5,310,800. The combined increases totalled $2,244,990.

In the aggregate, additional local taxes for 1966 based on said increases amounted to $53,817.14 for the City of Detroit, $42,825.62 for the Detroit Board of Education, and $19,901.93 for Wayne County.

Early consideration by this Court of the assessability of this steel purchased from a domestic based company and held in inventory for resale by each respondent is urgently required and would of course dispose of much of this litigation. More importantly, it would further insure application of uniform tax procedures to foreign goods which had been so acted upon by the actual importer as to have entered the channels of trade and accordingly lost any right to immunity.

(b) Failure to Apply Constitutional Principles to Facts Herein

The error of the Court of Appeals in striking down increased assessments against respondents consisted chiefly of failure to apply constitutional principles established by this Court (*Brown v. Maryland* (1827), 12 Wheat (U.S.) 419, 441, 6 L.Ed. 678, 686; *Low v. Austin* (1872), 13 Wall. (U.S.) 29, 20 L.Ed. 519; *Pervear v. Commonwealth of Massachusetts* (1867), 72 U.S. 608, 5 Wall. 475; *Waring v. Mayor of Mobile* (1869), 75 U.S. 342, 8 Wall. 110) to the acknowledged facts of these cases.

The opinion of the Court below noted factual similarities between *Hooven and Allison v. Evatt,* (1945) 324 U.S. 652, 65 S. Ct. 870, 89 L.Ed. 1252, and these consolidated steel cases. However, it also found basic differences (p. 877 of 165 N.W. 2d) (App. A, p. 18):

> "In the present cases the defendants (local steel wholesalers) contracted with companies (in the United States) which (as shown by documents in evidence) extended their own credit and received all payments for their own accounts. The precise relationship between the domestic companies and the foreign mills (or brokers in some cases) does not clearly appear on the records, but it can be discerned that the domestic concerns entered into separate and distinct contracts with the foreign sellers." (Material in parentheses added.)

These facts clearly showed respondents as purchasers and not the first vendors of the foreign steel. It was accordingly as taxable as other property (*Waring v. Mayor of Mobile, supra,* at p. 346 of 75 U.S.).

Respondents' transactions did not obligate a foreign producer to sell to them on credit, to ship goods to an American port, and deliver same in consideration of their obligation to accept and pay said foreign source therefor (*Hooven and Allison v. Evatt, supra,* at p. 661 of 324 U.S.).

Respondents' transactions were entered into with parties designated as "sellers" and not executed as agent for or "for account of" a named principal overseas (*Ibid* at p. 659).

Respondents did not acquire the steel to supply their needs of raw material for manufacture of any product (*Ibid* at p. 661).

(c) Constitutional Safeguards Overlooked by Court Below

Error of the Court of Appeals consisted of extending the doctrine of constitutional immunity of imports from local taxation beyond established limits established by decisions of this Court.

The holding in favor of respondents overlooks the first question proposed in *Hooven and Allison, supra,* at p. 658 of 324 U.S. which was to consider whether petitioner, Hooven and Allison, was the importer. The majority opinion concluded that the latter was the importer under those facts, at p. 661.

Extension of immunity to respondents results in characterizing as importers both respondents and the domestic companies with whom they contracted. Since respondents have not claimed to be using the steel themselves but are engaged in the business of selling same, what is to prevent any subsequent purchaser or the ultimate retailer from claiming immunity so long as such steel remains in the original form or package?

It is illogical to characterize more than one of the parties to the contract as the importer in the constitutional sense. It is also contrary to the decisions of this Court commencing with the carefully worded ground rules of *Brown v.*

Maryland, supra, at 441-442 of 12 Wheat (U.S.). While immunity of imports was adequately protected in the hands of an importer, it was clearly intended that power of the States to tax be nevertheless safeguarded. *Waring v. Mayor of Mobile, supra,* citing with approval at p. 346 of 75 U.S. the case of *Pervear v. Commonwealth,* 72 U.S. 608, 609, 5 Wall. 475.

(d) Restatement Urged of Import-Export Immunity Doctrine

The mere finding that respondents have on hand foreign steel in the original package, which they contracted to purchase from domestic-based companies, is not just cause for nullifying local taxation as the Court of Appeals did herein on purported authority of *Hooven and Allison v. Evatt, supra.*

We urge upon the Court the desirability, perhaps the necessity, of distinguishing its decision in *Hooven and Allison* from applicability to the facts here presented. Opportunity should be given to furnish this Court the full facts and arguments in briefs and in open hearing. Absent some guiding definition, it will leave the phrase "efficient cause of importation" which this Court applied to the facts in *Hooven and Allison, supra,* controlling the transactions herein which have been distinguished by the findings of the court below. To equate "the efficient cause of importation" with the "importer" under these circumstances will permit much foreign goods, even though domesticated, to be placed beyond the taxing jurisdiction of the states and their local taxing units.

On a previous occasion, this Court recognized that it had different facts before it and distinguished *Hooven and Allison.* In *Youngstown Sheet and Tube Co. v. Bowers* (1959), 358 U.S. 534, 3 L.Ed. 2d 490, the following appeared at top of 544 of 358 U.S.:

> "But the record there did not present, and this Court did not reach or decide the question we have here. Indeed the Court expressly reserved it."

It is respectfully suggested that uniform administration of assessment procedures with respect to foreign goods brought into Michigan as well as other States depends on clarification of the term "importer" by this Court. Otherwise field auditors, being legally untrained in reading correspondence initiating or documents confirming agreements of sale of goods, will be hard pressed to determine what personal property of foreign origin is to be included in an assessment or excluded when held by one claiming to be an importer.

Documents which may indicate that respondents have purchased goods directly from an overseas source or from a domestic-based firm acting as agent for a named principal create no problem. Their rights as importers under the Constitution are readily recognized. However, a claim of immunity based on "efficient cause of importation" requires an auditor to accept a contention which is generally unsupported by and in the present instances is contradicted by documents available for examination.

By granting opportunity for hearing of these appeals, the entire subject of constitutional immunity under the Import-Export clause can be clarified and rendered possible for future consistent use by this and inferior courts.

CONCLUSION

There can be no question that the constitutional immunity of imports from taxation by the states and their municipalities must be protected. But such protection should not proceed beyond any perceivable necessity to benefit a privileged class of taxpayers at the expense of the power of the states and their municipalities to impose taxes for their own support. The importer, that person or entity which directly causes the bringing of foreign goods into this country, is to be shielded from taxation of the foreign goods while the property is in his hands. But these foreign-produced goods should not be placed beyond the state's taxing jurisdiction after their transfer by this importing entity to domestic wholesalers. Having been acted upon by the importer, these foreign goods were domesticated and became a part of the general mass of property within the State, subject to the same benefits and burdens as all other property.

A proper balance between the interests of the nation warranting the protection of the channels of importation and the interests of the states and their municipalities in equitable and uniform taxation for their own support should, it is prayed, be re-established by a decision herein upon the merits.

Wherefore, petitioners request that this petition for a writ of certiorari should be granted.

Respectfully submitted,

City of Detroit, a municipal corporation, and Board of Assessors of the City of Detroit, Petitioners-Plaintiffs
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Dated: June 13, 1969.

APPENDIX A

OPINION OF MICHIGAN COURT OF APPEALS DECEMBER 2, 1968

STATE OF MICHIGAN
COURT OF APPEALS
DIVISION I

City of Detroit, a municipal corporation, Board of Assessors of the City of Detroit,
Plaintiffs-Appellees,
Michigan State Tax Commission,
Appellee,
v.
Kenwal Products Corporation, a Michigan Corporation,
Defendant-Appellant, et al.

No. 3,323

Before: T. G. Kavanagh, P.J., Burns and Fitzgerald, J.J.

Burns, J.

Eleven Detroit steel warehousing companies appeal by leave from tax commission decisions which ordered the value of certain steel to be placed on the city of Detroit personal property assessment rolls. The steel in question was shipped from foreign ports to Detroit where after clearing customs it was delivered to appellants' warehouses and stored for resale. Appellants claim that the steel was immune from property taxes because of US Const, art 1, §10, cl. 2, and cases which have interpreted that provision.

In *Brown v. Maryland* (1827), 25 US 419 (6 L ed 678), the Supreme Court invalidated a state licensing tax and

held that a state could not tax imports as long as the property remained in its original form or package. *Low v. Austin* (1872), 80 US 29 (20 L ed 517), expanded the principles of *Brown v. Maryland* to prohibit states from levying *ad valorem* taxes on goods which have not lost their character as imports. See also *City of Detroit v. Lake Superior Paper Company* (1918), 202 Mich 22. Susequent to *Brown v. Maryland, supra*, it has become well-established that imports lose their constitutional immunity when the importer (1) sells them or (2) "breaks up the packages" or (3) puts them to the use for which they were imported. *Youngstown Sheet & Tube Company v. Bowers* (1939), 358 US 534 (79 S Ct 383, 3 L ed 2d 490).

At the time of assessment in the present cases it appears that the imported steel was in its original package and that it was not being put to any use for which it was imported. The city of Detroit contends, and the tax commission so held, that domestic based companies imported the steel and sold it to appellants, thereby making the steel lose its character as an import. Appellants argue that they are the importers.

The United States Supreme Court spoke to the issue of who is an importer in *Hooven & Allison Company v. Evatt* (1945), 324 US 652, 663, 664 (65 S Ct 870, 89 L ed 1252):

> "When the merchandise is brought from another country to this, the extent of its immunity from state taxation turns on the essential nature of the transaction, considered in the light of the constitutional purpose, and not on the formalities with which the importation is conducted or on the technical procedures by which it is effected. It is common knowledge to lawyers and businessmen that vast quantities of merchandise are annually imported into this country by purchasers resident here, for sale or manufacture here.

> Sometimes the buyer completes the purchase abroad, in person, and ships to this country; sometimes, as in this case, the purchase is on unsecured credit, but more often it is under contracts by which the vendor reserves in himself or his agent or a banker a lien or title as security for payment of the purchase price on or after arrival. To say that the purchaser is any the less an importer in the one case than in the others, is to ignore the constitutional purpose and substitute form for substance. * * *
>
> "It is enough for present purposes that the merchandise in this case was imported; and that petitioner was the efficient cause of its importation, the purpose and effect of which was petitioner's acquisition of the merchandise for its manufacture into finished goods. We conclude that petitioner was the importer, and that the merchandise in its hands was entitled to the constitutional tax immunity, surviving delivery of the imports to it."

There are many factual similarities between the *Hooven Case, supra,* and these consolidated steel cases. In both instances the taxpayer placed orders with domestic corporate intermediaries for merchandise which originated in a foreign country. The price included charges for ocean freight, insurance, and customs. The goods were specifically marked when they left the foreign port to identify the product for the taxpayer, except in a few instances when the sales took place while the steel was en route. In *Hooven* the contract for sale between the domestic seaboard company and the Ohio manufacturer read, "for the account of" the foreign producer. Payment went directly from the Ohio manufacturer to the foreign producer and credit was extended by the foreign company.

In the present cases the appellants contracted with companies which extended their own credit and received all payments for their own accounts. The precise relationship between the domestic companies and the foreign mills (or brokers in some cases) does not clearly appear on the records, but it can be discerned that the domestic concerns entered into separate and distinct contracts with the foreign sellers.

There are two transactions involved in the *Kenwal Case* that differ from the other transactions in these consolidated cases. Kenwal entered into a joint venture with M. W. Zack Metal Company and the Donovan Wire & Iron Company. Zack and Donovan each ordered an entire shipload of steel through intermediaries, with the agreement that Kenwal would participate by taking half of each shipload. For convenience, all of the documents were made in the names of Zack and Donovan. We see no reason to treat these transactions any differently than the other sales involved in these consolidated cases.

In determining who is the "efficient cause" of importation in the constitutional sense, we must look beyond matters of form to the substance of the transaction. Perhaps the most significant substantive matter which the Supreme Court emphasized in *Hooven, supra,* 661, was the fact that performance of the contract called for, and necessarily resulted in, importation of the merchandise. Appellants' contracts with the domestic intermediaries specified that the steel was to be shipped from a foreign country or was already en route directly to the appellants. Performance of these contracts then, as in *Hooven,* called for, and necessarily resulted in, importation. In our opinion the transactions in these cases fall within the scope of the Hooven decision.

The orders of the tax commission are vacated.

APPENDIX B

ORDERS OF MICHIGAN STATE TAX COMMISSION

(Two orders applicable to the assessments placed against Ambassador Steel Company are set forth which orders are typical of those issued in the case of each of respondents herein for 1966, with exception of several against whom only a single order was issued.)

STATE OF MICHIGAN

Before the Michigan State Tax Commission

At a meeting of the Michigan State Tax Commission held on the 26th day of January, 1967 at Lansing, Michigan.

In Re Petition No. 22-5610 of the Detroit Board of Assessors, City of Detroit, County of Wayne, State of Michigan, received on June 20, 1966, requesting to place upon the assessment roll property omitted therefrom, consisting of personal property in the form of steel inventory, belonging to Ambassador Steel Company, 12211 Coyle Street, Detroit, Michigan.

The petitioner, the Detroit Board of Assessors, contends that personal property was erroneously omitted from the assessment rolls and the same should be placed upon the rolls in accordance with the provisions of Sec. 211.152 C.L. of Mich. 1948.

The Commission accepted the petition for examination and caused an investigation to be made to determine the assessable value of the personal property and to determine to whom the property should be assessed. A hearing was held on August 1, 1966 at Detroit, Michigan, at which hearing the taxpayer of the property in question was represented.

After consideration of the data presented at the hearing and the examination and investigation of the Commission's staff along with other written documents and exhibits of the taxpayer and the Detroit Board of Assessors the Commission finds:

1. The Detroit Board of Assessors in Petition No. 22-5610 asks the current assessment of $289,380 to be raised to $530,050 because of additional value revealed in an audit by a member of the Board of Assessors staff.

2. The investigation revealed that the issue involved in this dispute is not one of valuation but is a legal issue concerning the assessability of certain imported steel inventories. The city of Detroit claims that the steel in question has been purchased by the taxpayer from an importer and thereby has entered the channels of trade and become subject to ad valorem taxation. The taxpayer on the other hand claims that they are the "importers" and as such the steel in question retains its immunity from ad valorem taxation as an "imported product" under Article I, Section 10, Chapter 2 of the United States Constitution which reads:

> "No State shall, without the consent of the Congress, lay any imports (sic) or duties on Imports or Exports. . . ."

3. Taxable property, both real and personal in the city of Detroit are assessed at a significant range of from 41% to 56% of their true cash value; or a properly weighted mathematical average for the local unit of 45.25% which is sustained by an equalization study made by the Commission in 1963, which data has been kept routinely current by the Commission and checked in the field by the Commission's staff.

4. That where property was omitted from the assessment roll erroneously it should be placed upon the assessment roll as provided in Sec. 211.152 C. L. of Mich. 1948.

After these findings of facts and the consideration of all the information contained therein the Commission still has reservations. On the basis of the documents, exhibits, etc., there are doubts as to whether or not the goods in question are "imports" under Article I, Section 10, Chapter 2 of the United States Constitution. Taxation is the rule and there is a presumption that property is taxable unless it clearly appears that constitutional provisions or statutes grant an immunity from taxation. The burden of proof to establish immunity from ad valorem taxation rests on the taxpayer. The Commission is of the opinion that the taxpayer has failed to prove its claim of immunity from taxation based on the theory of imported goods. Therefore, the petition of the Board of Assessors of the city of Detroit is granted with reservation as to the final assessed valuation. This reservation is based upon the utilization of the correct assessment ratio to apply to true cash value in order to achieve the correct assessed valuation. It is determined in the opinion of the Commission that the undisputed true cash value of the property involved is $1,060,100 and the assessment level is 45.25% of true cash value. Therefore, appellant's assessment should be $479,700. Since the proposed assessment per Petition No. 22-5610 is $530,050 it is clearly apparent that the proposed assessment is significantly above and is not in accordance to the true cash value reduced to the local assessment level and the true cash value of all other real and personal property within the city of Detroit, reduced to such assessment level. The Commission fully appreciates the fact that the question presented in the petition is of a legal nature. We readily acknowledge that the courts are

best adapted to resolving the legal questions involved just as the Commission believes itself to be the most proficient in questions of valuation. Should the taxpayer be dissatisfied and seek further relief available under the law, the Commission directs his attention to Sec. 211.53 of the C.L. of Mich. 1948, or in an action for a declaration of rights.

Wherefore, it is hereby ordered that the amount of $479,700 be placed upon the assessment roll as the true and lawful value of such property.

February 2, 1967

Robert L. Purnell, Chairman

R. Gerald Barr, Commissioner

Ward G. Dexel, Commissioner

I hereby certify that this is a true copy of the order of the State Tax Commission on file in the State Tax Commission office as provided by Act 147, P.A. 1960.

/s/ Edward W. Kane
Secretary

STATE OF MICHIGAN

Before the Michigan State Tax Commission

At a meeting of the Michigan State Tax Commission held on the 26th day of January, 1967 at Lansing, Michigan.

In Re Petition No. 22-5611 of the Detroit Board of Assessors, City of Detroit, County of Wayne, State of Michigan, received on June 20, 1966, requesting to place upon the assessment roll property omitted therefrom, consisting of personal property in the form of steel inventory, to be assessed to Ambassador Steel Company, 12211 Coyle Street, Detroit.

The petitioner, the Detroit Board of Assessors, contends that personal property was erroneously omitted from the assessment rolls and the same should be placed upon the rolls in accordance with the provisions of Sec. 211.152 C. L. of Mich. 1948.

The Commission accepted the petition for examination and caused an investigation to be made to determine the assessable value of the personal property and to determine to whom the property should be assessed. A hearing was held on August 1, 1966 at Detroit, Michigan, at which hearing the taxpayer of the property in question was represented.

After consideration of the data presented at the hearing and the examination and investigation of the Commission's staff along with other written documents and exhibits of the taxpayer and the Detroit Board of Assessors the Commission finds:

1. The Detroit Board of Assessors in Petition No. 22-5611 asks the current assessment of $415,730 to be lowered to $414,610 because of information revealed in an audit by a member of the Board of Assessors staff.

2. The investigation revealed that the issue involved in this dispute is not one of valuation but is a legal issue concerning the assessability of certain imported steel inventories. The city of Detroit claims that the steel in question has been purchased by the taxpayer on a title retaining sales contract from an importer whereby the material has been committed to the exclusive use of the taxpayer as long as he adheres the terms of the contract and thereby the material has entered the channels of trade and become subject to ad valorem taxation. The taxpayer on the other hand claims that the title has never passed to them from the importers and as such the steel in question retains

its immunity from ad valorem taxation as an "imported product" under Article I, Section 10, Chapter 2 of the United States Constitution which reads:

> "No State shall, without the consent of the Congress, lay any imports (sic) or duties on Imports or Exports. . . ."

3. Taxable property, both real and personal in the city of Detroit are assessed at a significant range of from 41% to 56% of their true cash value, or a properly weighted mathematical average for the local unit of 45.25% which is sustained by an equalization study made by the Commission in 1963, which data has been kept routinely current by the Commission and checked in the field by the Commission's staff.

4. That where property was omitted from the assessment roll erroneously it should be placed upon the assessment roll as provided in Sec. 211.152 C.L. of Mich. 1948.

After these findings of facts and the consideration of all the information contained therein the Commission still has reservations. On the basis of the documents, exhibits, etc., there are doubts as to whether or not the goods in question are "imports" under Article I, Section 10, Chapter 2 of the United States Constitution. Taxation is the rule and there is a presumption that property is taxable unless it clearly appears that constitutional provisions or statutes grant an immunity from taxation. The burden of proof to establish immunity from ad valorem taxation rests on the taxpayer. The Commission is of the opinion that the taxpayer has failed to prove its claim of immunity from taxation based on the theory of imported goods. Therefore, the petition of the Board of Assessors of the city of Detroit is granted with reservation as to the final assessed valuation. This reservation is based upon the utilization of the correct assessment ratio to apply to true

cash value in order to achieve the correct assessed valuation. It is determined in the opinion of the Commission that the undisputed true cash value of the property involved is $829,220 and the assessment level is 45.25% of true cash value. Therefore, appellant's assessment should be $375,200. Since the proposed assessment per Petition No. 22-5611 is $414,610 it is clearly apparent that the proposed assessment is significantly above and is not in accordance to the true cash value reduced to the local assessment level and the true cash value of all other real and personal property within the city of Detroit, reduced to such assessment level. The Commission fully appreciates the fact that the question presented in the petition is of a legal nature. We readily acknowledge that the courts are best adapted to resolving the legal questions involved just as the Commission believes itself to be the most proficient in questions of valuation. Should the taxpayer be dissatisfied and seek further relief available under the law, the Commission directs his attention to Sec. 211.53 of the C. L. of Mich. 1948, or in an action for a declaration of rights.

Wherefore, it is hereby ordered that the amount of $375,200 be placed upon the assessment roll as the true and lawful value of such property.

February 2, 1967.

Robert L. Purnell, Chairman

R. Gerald Barr, Commissioner

Ward G. Dexel, Commissioner

I hereby certify that this is a true copy of the order of the State Tax Commission on file in the State Tax Commission office as provided by Act 147, P.A. 1960.

/s/ Edward W. Kane
Secretary

APPENDIX C

Compiled Laws of Michigan 1948, 211.1

"Sec. 1. That all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation."

Compiled Laws of Michigan 1948, 211.2

"Sec. 2. * * *

Tax day, preparation of assessment roll, examination of properties by assessors. The taxable status of persons and real and personal property shall be determined as of each December 31, which shall be deemed the tax day for the immediately succeeding calendar year, which is also the tax year, any provisions in the charter of any city or village to the contrary notwithstanding. No assessing officer shall be restricted to any particular period in the preparation of the assessment roll but may survey, examine or review properties at any time prior to or after the tax day."

* * * * *

Compiled Laws of Michigan 1948, 211.8

"Sec. 8. For the purposes of taxation, personal property shall include:

1. All royalties;

2. All goods, chattels and effects within the state;

* * * * *

8. All other personal property not herein enumerated, and not especially exempted by law;"

* * * * *

Section 1, Chapter II, Title VI, Charter of the City of Detroit, 1918 (1963 Ed.)

"All real and personal property within the city subject to taxation by the laws of this state shall be assessed at its true cash value by the board of assessors herein provided. Assessments shall be made according to assessment districts, the boundary lines of which shall conform to ward boundaries as established from time to time by the common council. There shall be an assessment roll in book form for each such district. All taxes upon personal property may be assessed in any district, whether the person assessed is a resident of such district or not."

Section 2, Chapter II, Title VI, Charter of the City of Detroit, 1918 (1963 Ed.)

"In all assessments, the lands, tenements and subdivisions assessed shall be described by referring to the number and section of the lot and the name of the owner or occupant thereof, and if the number and section of any lot, or the name of the owner thereof can not be ascertained, then by such other sufficient description as the board of assessors may deem proper. If, by mistake or otherwise, any person may be improperly designated as the owner of any lot, tenement, or premises, such assessment or tax shall not for that cause be vitiated, but the same shall be a lien on such lot, tenement or premises, and collected as in other cases. If any lot or lots shall lie partly in two or more districts, the same shall be assessed in the district where the greater portion of said lot or lots is situated."

Section 7, Chapter II, Title VI, Charter of the City of Detroit, 1918 (1963 Ed.)

"Sec. 7. After the assessment rolls shall have been fully and finally confirmed, it shall, as herein provided, be the duty of the board of assessors to cause the amount of all taxes, in dollars and cents, authorized to be assessed and collected in each year, to be ratably assessed to each person named or lots described, upon and according to the aggregate valuation which such person or lots shall have been assessed in said assessment rolls. Such ratable assessments shall be entered in a book prepared for that purpose to be known as the tax roll for each district, in a column showing the amount of city taxes assessed to each person or lot in each year. Such tax rolls shall contain columns for the names and addresses of all persons assessed hereunder. When said tax rolls shall have been completed, the board shall deliver the same to the controller, who shall cause the same to be delivered to the city treasurer on the first day of July, take his receipt therefor and charge him therewith. All city taxes shall become a debt against the owner from the time of the listing of property for assessment by the board of assessors."

Section 1, Chapter IV, Title VI, Charter of the City of Detroit, 1918 (1963 Ed.)

"All city taxes shall be due and payable on the fifteenth day of July in each year, and on that date shall become a lien on the property taxed. The owners or occupants or parties in interest to any real estate assessed hereunder shall be liable to pay such taxes, and all assessments levied in accordance herewith. The owners or persons in possession of any personal property shall pay all taxes assessed thereon."

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. .....

CITY OF DETROIT, a municipal corporation,
BOARD OF ASSESSORS OF THE CITY OF DETROIT,
Petitioners-Plaintiffs,
MICHIGAN STATE TAX COMMISSION,
Appellant,
v.
AMBASSADOR STEEL COMPANY,
a Michigan corporation,
ADVANCE STEEL COMPANY,
a Michigan corporation,
AMERICAN STEEL CORPORATION,
a Michigan corporation,
BARSTEEL CORPORATION,
a Michigan corporation,
CONTRACTORS STEEL COMPANY,
a Michigan corporation,
CRAFT STEEL & SUPPLY COMPANY, INC.,
a Michigan corporation,
EWALD STEEL COMPANY,
a Michigan corporation,
KASLE STEEL CORPORATION,
a Michigan corporation,
KENWAL PRODUCTS CORPORATION,
a Michigan corporation,
PARAGON STEEL CORPORATION,
a Michigan corporation,
TITAN STEEL COMPANY,
a Michigan corporation,
Respondents.

SUPPLEMENTAL PETITION FOR WRIT OF CERTIORARI TO MICHIGAN COURT OF APPEALS, DIVISION 1, AND APPENDIX

To: The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners-Plaintiffs present this supplemental petition pursuant to Rule 24 (5) to call attention to intervening matters not available at the time of forwarding their petition for writ of certiorari to Michigan Court of Appeals, Division 1, and Appendix, on Friday, June 13, 1969. Purpose hereof is to explain delay in delivery by personnel of that court of certified transcript of record including proceedings therein which fact did not come to attention of undersigned counsel until June 20, 1969.

Petitioners find themselves in the dilemma of either being turned back from the threshold of consideration of their petition for certiorari due to absence of a timely filed certified transcript of the record, etc., or, in the alternative, of directing attention to failure on the part of clerk of the court below to prepare, certify and forward same despite request made and later assurance that it was being attended to.

Following the denial on March 20, 1969, by Michigan's Supreme Court of application for leave to appeal, counsel for petitioners was delayed in tracing disposition of a portion of the records involved. These were exhibits, transcripts of hearing, etc., brought up from the Michigan State Tax Commission where these contested 1966 personal property assessments originated.

Once these were located, attention was called to same by a letter directed to Clerk of the Court of Appeals by counsel for petitioners on June 5, 1969. This was pursued further by sucessive steps detailed in affidavits incorporated in Appendix D attached hereto. Originals of these affidavits by Richard R. Roesch, assistant attorney general

assigned to represent Michigan State Tax Commission (pp. 31-32), by Marguerite McKeever, record clerk in the Court of Appeals (p. 33), in addition to that of undersigned counsel (pp. 29-30) have been filed with the Clerk of this Court in support of this supplemental petition.

On June 10, Mr. Roesch delivered the records as certified by the State Tax Commission directly into the hands of clerk of the Court of Appeals with a request that these together with record of proceedings in that court be certified to the Clerk of the United States Supreme Court. On June 13, counsel for petitioners called on the telephone to the Detroit office of said Court of Appeals, spoke to Marguerite McKeever, record clerk, and requested her to inquire of the Lansing office regarding the matter.

On the same June 13, a telephone call was received by counsel for petitioners from Marguerite McKeever advising him that the records had been certified and were being forwarded from the Lansing office to the Clerk of the United States Supreme Court in Washington. This gave counsel for petitioners a feeling of assurance that said records would be delivered at approximately the same time as the petitions, fee and proof of service mailed from Detroit on June 13.

Petitioners in good faith expected that the steps thus taken would result in perfecting the filing of their petition in the manner and within the time required by Rule 22. Due to circumstances beyond their control and of which neither they nor their counsel were aware, said records were found to be resting in the Lansing office of the Court of Appeals on June 20, 1969, awaiting the return of the clerk of that court from a judicial conference which he was attending in California.

Once this was discovered, upon peremptory order of a member of the court below, the records were prepared, certified, and, it is anticipated, were delivered into the office of the Clerk of this Court.

Unless consideration is here given and allowance made for the mischance of such delayed filing of the records, etc. petitioners will be deprived of any remedy to obtain review of the decision of the Court of Appeals (165 N.W. 2d 875 (1968)) and determination by this Court of the proper application of the Import-Export clause to the facts of these 1966 tax cases. Petitioners and taxpayers alike will be unduly pitted against each other in administration of State tax laws from which the latter claim immunity, until same is ultimately resolved.

RELIEF

In view of the circumstances shown, petitioners pray that their petition, etc., be accepted as timely filed and that upon consideration thereof this Court grant them a writ of certiorari to the Michigan Court of Appeals, Division 1.

Respectfully submitted,

ROBERT REESE,
Corporation Counsel,

JULIUS C. PLISKOW,
ARTHUR YIM,
Assistants Corporation Counsel,
1010 City-County Building,
Detroit, Michigan 48226,
965-4200, Ext. 584,
Attorneys for Petitioners-Plaintiffs.

June 23, 1969.

APPENDIX D

AFFIDAVIT OF JULIUS C. PLISKOW

State of Michigan,
County of Wayne—ss.

Julius C. Pliskow, being first duly sworn, deposes and says that he is Assistant Corporation Counsel, representing City of Detroit in the above-entitled matters and that in connection with petition for certiorari submitted therein he personally took the following steps to obtain preparation of the transcript of the record in the case including the proceedings in the Michigan Court of Appeals as certified by the clerk of that court:

by letter dated June 5, 1969 to the Clerk of the Court of Appeals at Lansing, Michigan requesting that such steps be taken; and

by telephone call on June 9, 1969 to Richard R. Roesch, Assistant Attorney General, at Lansing, Michigan, who had possession of the several transcripts and records as certified by Michigan State Tax Commission, to have same delivered to Clerk of the Court of Appeals at Lansing for preparation, certification and shipment to Clerk of Supreme Court of the United States and by telephone call on June 13, 1969 to Marguerite McKeever, record clerk in Detroit office of Michigan Court of Appeals requesting that she ascertain whether the employees of the Lansing Office of said Court had prepared, certified and shipped the record to the Clerk of the Supreme Court of the United States; and

by forwarding to the Clerk, Court of Appeals, Lansing, Michigan, a copy of letter dated June 13, 1969, addressed to John F. Davis, Esq., Clerk, Supreme Court in which it was noted that "respective records in the court below with certified schedule of proceedings from the Clerk of the Court of Appeals" would be received under separate cover.

Further deponent says that the failure to prepare, certify and ship same to the Clerk of the Supreme Court did not come to his attention until this date; that he had received no prior call or communication either from Mr. Roesch, from the Clerk of the Court of Appeals at Lansing or from the record clerk in the Detroit office to apprise him of any delay or neglect regarding same.

Further deponent says that the failure to have same delivered to the Clerk of the Supreme Court was not due to any culpable negligence on the part of deponent or of any other representative of the City of Detroit.

Further deponent says not.

/s/ Julius C. Pliskow

Subscribed and sworn to before me this 20th day of June, A.D., 1969.

/s/ Rosemary Yurik,
Notary Public, Wayne County, Michigan.
My commission expires July 18, 1972.

AFFIDAVIT OF RICHARD R. ROESCH

State of Michigan,
County of Ingham—ss.

Now comes Richard R. Roesch, an Assistant Attorney General of the State of Michigan, who being first duly sworn deposes and says:

1. That he represents the Michigan State Tax Commission in its litigation and participated in such capacity in the consolidated cases reported in 165 NW 2d 875 (1968).

2. That subsequent to denial of leave to appeal by the Michigan Supreme Court on March 20, 1969 from the decision of the Michigan Court of Appeals in these consolidated cases the respective records and transcripts of hearings before the Michigan State Tax Commission were returned to the Michigan Court of Appeals; and that subsequently these records and transcripts of hearings were returned by the Michigan Court of Appeals to the Michigan State Tax Commission, which had originally certified them to the Court of Appeals.

3. That, upon being advised by the office of the City of Detroit's Corporation Counsel that the City of Detroit would petition the Supreme Court of the United States for a writ of certiorari to the Michigan Court of Appeals in the consolidated cases, the certified records and transcripts were returned to the Court of Appeals on June 10, 1969 by this deponent; and that they were delivered directly into the hands of Ronald L. Dzierbicki, Clerk of the Court of Appeals, who was requested to certify them, as well as the record of proceedings before the Court of Appeals, to the Clerk of the United States Supreme Court.

4. That said Ronald L. Dzierbicki, Clerk of the Court of Appeals, received the respective records and transcripts, which had been originally certified to that Court by the Michigan State Tax Commission, and assured the deponent herein that he would contact Julius C. Pliskow, Assistant Corporation Counsel of the City of Detroit, to assure him that all the desired transcripts and records would be timely certified to the Clerk of the United States Supreme Court.

And further deponent sayeth not.

/s/ Richard R. Roesch

Subscribed and sworn to before me, a Notary Public in and for said County, this 20th day of June, A.D., 1969.

/s/ Leona M. Hudnut,
Notary Public, Ingham County, Michigan.
My commission expires October 17, 1972.

AFFIDAVIT OF MARGUERITE McKEEVER

State of Michigan,
County of Wayne—ss.

Marguerite McKeever being first duly sworn, deposes and says that she is record-clerk in the Detroit office of Michigan Court of Appeals and that on June 13, 1969 at the request of Julius Pliskow, Assistant Corporation Counsel for the City of Detroit, she called by telephone to the Lansing office and made inquiry as to the certification, packaging and shipment of record in the case of City of Detroit, et al v. Ambassador Steel Co., et al to the Clerk of the Supreme Court of the United States by the office of Clerk of Michigan Court of Appeals. Further deponent says not.

/s/ Marguerite McKeever

Subscribed and sworn to before me this 20th day of June, 1969.

/s/ Sanda Demetriou,
Notary Public, Wayne County, Michigan.
My commission expires November 20, 1972.

FILED
JUL 3 1969
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1969

No. 280

CITY OF DETROIT, a municipal corporation,
BOARD OF ASSESSORS OF THE CITY OF DETROIT,
Petitioners-Plaintiffs,
MICHIGAN STATE TAX COMMISSION,
Appellant,
v.
AMBASSADOR STEEL COMPANY,
a Michigan corporation,
ADVANCE STEEL COMPANY,
a Michigan corporation,
AMERICAN STEEL CORPORATION,
a Michigan corporation,
BARSTEEL CORPORATION,
a Michigan corporation,
CONTRACTORS STEEL COMPANY,
a Michigan corporation,
CRAFT STEEL & SUPPLY COMPANY, INC.,
a Michigan corporation,
EWALD STEEL COMPANY,
a Michigan corporation,
KASLE STEEL CORPORATION,
a Michigan corporation,
KENWAL PRODUCTS CORPORATION,
a Michigan corporation,
PARAGON STEEL CORPORATION,
a Michigan corporation,
TITAN STEEL COMPANY,
a Michigan corporation,
Respondents.

BRIEF OF RESPONDENTS, AMBASSADOR STEEL COMPANY AND EWALD STEEL COMPANY IN OPPOSITION TO GRANTING OF THE PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS, DIVISION 1, AND APPENDIX

(For Attorneys, See Inside Front Cover)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. .....

CITY OF DETROIT, a municipal corporation,
BOARD OF ASSESSORS OF THE CITY OF DETROIT,
Petitioners-Plaintiffs,
MICHIGAN STATE TAX COMMISSION,
Appellant,
v.
AMBASSADOR STEEL COMPANY,
a Michigan corporation,
ADVANCE STEEL COMPANY,
a Michigan corporation,
AMERICAN STEEL CORPORATION,
a Michigan corporation,
BARSTEEL CORPORATION,
a Michigan corporation,
CONTRACTORS STEEL COMPANY,
a Michigan corporation,
CRAFT STEEL & SUPPLY COMPANY, INC.,
a Michigan corporation,
EWALD STEEL COMPANY,
a Michigan corporation,
KASLE STEEL CORPORATION,
a Michigan corporation,
KENWAL PRODUCTS CORPORATION,
a Michigan corporation,
PARAGON STEEL CORPORATION,
a Michigan corporation,
TITAN STEEL COMPANY,
a Michigan corporation,
Respondents.

BRIEF OF RESPONDENTS, AMBASSADOR STEEL COMPANY AND EWALD STEEL COMPANY IN OPPOSITION TO GRANTING OF THE PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS, DIVISION 1, AND APPENDIX

TO: The Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Respondents, Ambassador Steel Company and Ewald Steel Company, respectfully oppose the granting of a Writ of Certiorari to review the Judgment of the Michigan Court of Appeals, Division 1, entered in the above-entitled consolidated cases on December 2, 1968.

I. OPINIONS BELOW

The opinion of the Michigan Court of Appeals (Appendix A, *infra*), an appellate court of said State appears in 165 N.W. 2d 875 (1968).

The Opinion of the Michigan State Tax Commission dated January 26, 1967 is unreported and is hereto attached as Appendix B, *infra*.

Denial of Application for timely Leave to Appeal to the Michigan Supreme Court was issued March 20, 1969, as indicated in 165 N.W. 2d 875 (1968) and is marked Appendix C and is hereto attached.

Order of the Michigan Supreme Court on May 21, 1969 denying the Motion of the City of Detroit and the Board of Assessors of the City of Detroit to stay enforcement of an Order of this Court pending Petition for Certiorari to the Supreme Court of the United States is unreported and is presented in Appendix D attached hereto.

II. JURISDICTION

(1) Involved herein are appeals from the Michigan Court of Appeals which vacated certain assessments placed on Detroit's 1966 personal property rolls by the Michigan State Tax Commission against taxpayers. The Michigan Court of Appeals held that the taxpayers (respondents herein) were entitled to immunity from taxation thereof by virtue of Article I, Sec. 10, Cl. 2 of the Constitution of United States. (See Appendix A, *infra.*)

A timely application for leave to appeal filed with the Michigan Supreme Court by petitioners was denied March 20, 1969. (See Appendix C, *infra.*)

(2) Jurisdiction of this Court to deny writ of certiorari is invoked under C. 646, 62 Stat. 929. (28 U.S.C.A. 1257 (3)). This Brief applies to Respondents, Ambassador Steel Company and Ewald Steel Company.

III. QUESTION PRESENTED FOR REVIEW

This case gives rise to the question whether steel imported by Respondents from Japan and Continental Europe to port of Detroit are entitled to immunity from *ad valorem* taxation by the City of Detroit under the Import-Export Clause of the U. S. Constitution (Article I, Sec. 10, Cl. 2).

The Michigan Court of Appeals said, "Yes".
Petitioners-Plaintiffs say, "No".

IV. CONSTITUTIONAL PROVISION INVOLVED

The provision in Article I, Sec. 10, Cl. 2 of the United States Constitution reads as follows:

> "No State shall, without the Consent of the Congress, lay any Imports or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws; and the net Produce of all Duties and Imports, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress."

V. STATEMENT OF THE CASE

The facts governing this case are stated in the Opinion of the Michigan Court of Appeals with severe brevity and they are based on the testimonial record and the cases cited by the Court. (See Appendix A, *infra*.) The critical facts which disclosed the background of the controversy are in substance as follows:

Some time prior to the present contest, the City of Detroit adopted the following "guide lines" to determine immunity from taxation under the U. S. Constitution:

> "1. Merchandise is purchased direct from a foreign mill or foreign distributor
>
> 2. The records and documents disclose an agency or representative relationship
>
> 3. The merchandise is held for resale without further processing and has been obtained under conditions set forth in 1 or 2 above."

On the basis of the above formula, the City Assessors held that the Respondents were not entitled to tax immunity from *ad valorem* taxation. Respondents appealed and maintained that they were entitled to tax immunity under the provisions of Article I, Sec. 10, Cl. 2 of the U. S. Constitution.

The Common Council of the City of Detroit sitting as a Review Board was in accord with Respondents' position, but advised counsel for the Board of Assessors to appeal the case to the Michigan State Tax Commission for a ruling.

The Michigan State Tax Commission admitted in its ruling of February 1, 1967 that:

> . . . "there are doubts as to whether or not the goods in question are 'imports' under Article I, Sec. 10, Cl. 2 of the U. S. Constitution. Taxation is the rule and there is a presumption that property is taxable unless it clearly appears that constitutional provisions or statutes grant an immunity from taxation."

The commission further acknowledged the lack of sufficient expertise to determine the question in the following language:

> "The Commission fully appreciates the fact that the question presented in the petition is of a legal nature. We readily acknowledge that the courts are best adapted to resolving the legal questions involved just as the Commission believes itself to be the most proficient in questions of valuation. Should the taxpayer be dissatisfied and seek further relief available under the law, the Commission directs his attention to Sec. 211.53 of the C. L. of Mich. 1948, or in an action for a declaration of rights.
>
> WHEREFORE, it is hereby ordered that the amount of $479,700 be placed upon the assessment roll as the true and lawful value of such property."

(For the full text, see Appendix B, *infra.*)

Respondents filed an Application for Leave to Appeal to the Michigan Court of Appeals and Briefs in Support of it. Counsel for Petitioners-Plaintiffs opposed Respondents' Leave to Appeal but failed to file a Brief in support of its Answer, and relied solely on the Brief filed by the Attorney General who appeared for the Michigan State Tax Commission. It is interesting to note that the Attorney General did not ask for a dismissal of the Application for Leave to Appeal as Petitioners-Plaintiffs did, but limited his protest as follows:

> "Appellee prays that this Honorable Court deny Appellant's Application for Leave to Appeal without prejudice to its institution of an action in the Circuit Court for Wayne County, adapted to resolution of the legal issue presented."

The Michigan Court of Appeals granted the leave to appeal and subsequently the 11 cases of all respondents were consolidated, arguments were heard from all counsels and the Michigan Court of Appeals reversed the determination of the Michigan State Tax Commission on December 2, 1968, as shown in Appendix A, *infra*.

Petitioners-Plaintiffs filed a timely Application for Leave to Appeal to the Michigan Supreme Court. The Michigan Supreme Court on March 20, 1960 denied said leave as follows:

> "On order of the Court (T. G. Kavanagh, Jr. not participating), the application for leave to appeal is considered, and the same is hereby DENIED, as plaintiffs and appellants have failed to persuade the Court that they have a meritorious basis for appeal or that the decision of the Court of Appeals was clearly erroneous. Plaintiffs' and appellants' request for a stay of proceedings is DENIED, as thereby being moot." (See Appendix C, *infra*.)

Thereafter, Petitioners-Plaintiffs filed a Motion to Stay Enforcement of an Order of the Michigan Supreme Court pending Petition for Certiorari to the Supreme Court of the United States.

On May 21, 1969, the Michigan Supreme Court denied the Motion to said enforcement as follows:

> "On order of the Court, the motion by the City of Detroit and the Board of Assessors of the City of Detroit, plaintiffs and appellants, to stay enforcement of an order of this Court pending petition for certiorari to the Supreme Court of the United States is considered, and the same is hereby DENIED, as no immediate emergency has been alleged or shown." (See Appendix D)

VI. ARGUMENT

Counsel for Petitioners studiously avoided mentioning the fact that the Attorney General in the initial Brief did not ask the Court of Appeals for affirmance of the ruling of the State Tax Commission, but, prayed that Respondents' Leave to Appeal be dismissed without prejudice so the case may be submitted

> "in the Circuit Court for Wayne County, adapted to resolution of the legal issue presented."

In other words, counsel sensed the illegitimacy of the State Tax Commission's opinion which failed to make a finding of fact and which confessed its inability to make a proper legal decision. The ruling of the State Tax Commission (Appendix B, *infra*) shows on the face of it, its invalidity and therefore, the Michigan Court of Appeals as an appellate tribunal was compelled to make a finding of fact on the basis of the testimonial record. Counsel for Petitioners,

in the previous Briefs argued that the efficient-cause-of-imports rationale advanced in *Hooven & Allison Co. v. Evatt* (1945), 324 U.S. 652, 663, 664, is mere "dicta" and that,

> "the *Brown* case must be considered in the light of the times and condition when it was decided" (*Brown v. Maryland,* 12 Wheat (U.S.) 419).

Counsel, since then, abandoned this specious argument and now urges that the determinations of the Tax Commission,

> "increased assessments for 1966 against the several respondents from $3,065.810 to $5,310,00. The combined increases totaled $2,244,990."

and further points out that,

> "in the aggregate, additional local taxes for 1966 based on said increases amounted to $53,817.14 for the City of Detroit, $42,825.62 for the Detroit Board of Education, and $19,901.93 for Wayne County."

(See Petitioners' Petition for Writ of Certiorari, page 7.)

We submit that the express mandate of the Constitution of the United States cannot be brushed aside as a matter of expediency. Professor Benjamin F. Wright of Harvard University in, "The Growth of American Constitutional Law" at page 54 shows that there was no change in the law since *Brown v. Maryland,* 12 Wheat. 419 (1827). Mr. Justice Frankfurter in *Youngstown Sheet & Tube Co. v. Bowers,* 358 U.S. 534 affirms the same.

He further urges on page 54:

> "Marshall was not opposed to state regulation of commerce, provided it in no way threatened the freedom of commercial intercourse among the states and with foreign nations. If there was even a remote possibility that the states' action would tend

> toward a restoration of 'the oppressed and degraded state of commerce previous to the adoption of the Constitution,' then the statute should be declared void."

In other words, to deviate from the cardinal principles of *Brown, supra,* amounts to a reversion to "the oppressed and degraded state of commerce previous to the adoption of the Constitution."

At pg. 232, Professor Wright points out that all state acts which interfered with the commerce clause since 1937 were "held unconstitutional" for the following reasons:

> "Almost all of the remaining cases in which state acts have been held unconstitutional by the Court since 1937 were decided under the commerce clause and every one of the seven commerce cases involved a state tax which in some fashion interfered with interstate commerce or extrastate business. These acts were among those which have demonstrated of recent years a tendency toward the erection of barriers to interstate trade, or, as has been said with extravagant alarm, toward the Balkanization of the United States. That unhappy condition does not seem just around the corner, but the search by the states for new sources of revenue in an age when business continues to transcend state lines has produced problems to which the solution is not yet clear."

Counsel for Petitioners in the instant case is in substance seeking to effect "the Balkanization of the United States" in order to increase the revenues under the *ad valorem* taxes of the City of Detroit in disregard of the cardinal principles laid down in the *Brown* case, *supra.*

In the next section, we shall reiterate the argument we presented before the Michigan Court of Appeals in support of our position. (Appellants are now respondents.)

Historically, the crucial question now before the Court has been answered as far back as 1789 by the Framers of the Constitution at the Philadelphia Convention which took measures to make the United States a free trade area and to withdraw from the States the selfish exercise of power over foreign trade, both import and export. They accomplished this by two provisions in the Constitution: the Commerce Clause and the Import-Export Clause. Mr. Justice Frankfurter, in *Youngstown Sheet and Tube v. Bowers Tax Commission,* 358 US 534 (1958) points out that in dealing with foreign commerce the Constitution imposed upon the States rigorous restrictions which hardly require judicial construction:

> "It rigorously confined the States to what might be 'absolutely necessary', the only constitutional permission in terms so drastically limited, and beyond this permission of what is 'absolutely necessary' state action was barred except by consent of Congress as expressive of the national interest. Thus, hardly any room was left by the Constitution for judicial construction of the command, 'No State shall, without the Consent of Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws. . . .' This strict limitation on the States was still further qualified by the requirement that the 'net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.'"

The meaning of the language in the Import-Export Clause of the Constitution, above quoted, received judicial con-

struction as far back as 1827 in *Brown v. Maryland,* 12 Wheat. (US) 419, 6 L ed 678 (1827). In that famous case, Chief Justice Marshall established the cardinal principle that a State may not tax imports from foreign countries while retained by the importer in their original package or form prior to the use of the goods or their sale. This landmark decision was followed by the United States Supreme Court without a single deviation since then in about twelve subsequent decisions in our entire history.

Another landmark decision in which the Import Clause has been authoritatively interpreted by the Supreme Court as in *Brown v. Maryland* is *Hooven & Allison Company v. Evatt,* 324 US 652-694 in 1944. In this case, the Supreme Court in a definitive decision, described an importer in a "constitutional sense". The Court stressed that:

> "In determining the meaning and application of the constitutional provision, we are concerned with matters of substance not of form. When the merchandise is brought from another country to this, the extent of its immunity from state taxation turns on the essential nature of the transaction, considered in the light of the constitutional purpose, and not on the formalities with which the importation is conducted or on the technical procedures by which it is effected."

The last case which left *Brown v. Maryland* and the *Hooven & Allison* cases undisturbed issued by the Supreme Court in 1958 is *Youngstown v. Bowers,* 358 US 534 (1958) which presents a different set of facts than the case under consideration. We maintained from the very inception of this lawsuit that the facts in our case come squarely within the boundaries and rationale of *Hooven & Allison* which stressed that:

> "Constitutional rights will not be decided upon the form of a contract, *but rather upon its substance and the actual course of dealing between the parties pursuant thereto.*" (Emphasis added.)

Hooven further held: "It is enough for present purposes that the merchandise in this was imported; and that petitioner *was the efficient cause of its importation, the purpose and effect of which was petitioner's acquisition of the merchandise for its manufacture into finished goods*" (emphasis added). (In our case the imported steel was for sales.) It further stressed:

> "Sometimes the buyer completes the purchase abroad, in person, and ships to this country; sometimes as in this case the purchase is on unsecured credit, but more often it is under contracts by which the vendor reserves in himself or his agent or a banker a lien or title as security for payment of the purchase price on or after arrival. To say that the purchaser is any the less an importer in one case than in the other is to ignore the constitutional purpose and substitute form for substance."

The City of Detroit, in total disregard of the judicial construction given by the Supreme Court to the Import-Export Clause, in *Brown v. Maryland* in 1827, and in all subsequent decisions devised its own policy to determine tax immunity under the United States Constitution under the "guide lines" formula referred to above.

It is quite obvious to any student of the Constitution that the meaning of the provisions of the "guide lines" drafted by the Corporation Counsel have as much relationship to the rationale laid down by the Supreme Court in *Brown v. Maryland* as a copy of Mickey Mouse has to a fresco by Michelangelo.

It is undisputed that two accountants (Mr. Taylor and Mr. Claypoole), of the Assessor's office were authorized to examine Appellants' records under the above "guide lines" which is labeled as an "audit" and after the completion of the audit they held that Appellants were not entitled to tax immunity. We have cited the testimony of the accountants for City of Detroit and their uttter misconception of the material facts and law which they displayed under cross-examination.

The Common Council sitting as a Review Board rejected the findings of the auditors but they advised Counsel for the Board of Assessors to appeal the case to the Michigan State Tax Commission for a ruling.

It should further be observed that the State Tax Commission in its rulings and the Attorney General did not charge Appellants with failing to meet the "guide lines" which are a Simon-pure invention of plaintiffs-appellants. The record discloses that the Common Council and later the State Tax Commission openly and candidly disclaimed legal sophistication to qualify them to decide the complex constitutional issue involved in this lawsuit.

The Attorney General in the Brief admits that the steel in question originated in foreign countries and were shipped directly to the port of Detroit without any stoppage in transit, and further admits that none of the steel in question was used by appellants "in a manufacturing process" and were imported strictly for sale.

From the foregoing, it is obvious that the Attorney General was fully cognizant of the fact that the State Tax Commission failed to make a proper finding as it is required to do under the Statute. In *Pavilion Apartments, Inc. v. State Tax Commission*, 373 Michigan 601 (1964), the Supreme Court held as follows:

> "An administrative agency hearing affecting the property of a party does not meet the minimum requirements of due process if the affected party is not afforded an opportunity to know, test, explain, or refute all of the evidence which may be relied upon by the administrative agency in reaching its decision."

In *Saginaw Broadcasting Company v. Federal Communication Commission*, 96 F 2d 554:

> "When a decision is accompanied by finding of fact, the reviewing court can decide whether the decision reached by the court or commission follows as a matter of law from the facts stated as its basis, and also whether the facts so stated have any substantial support in the evidence. In the absence of finding of facts, the reviewing tribunal can determine neither of these things. The requirement of findings is thus far from a technicality. On the contrary, it is to insure against Star Chamber methods, to make certain that justice shall be administered according to the facts and law." (See *New Jersey Bell Telephone Company v. Communication Workers of America*, Supreme Court of New Jersey, 1950, 5 New Jersey 354, 75 A 2d 721.)

In this connection, Justice Frankfurter, in *Secretary of Agriculture v. United States*, 347 US 645 (1945), asserted:

> "Something more precise is requisite in the quasi-jurisdictional findings of an administrative agency
>
> . . .
>
> *We must know what a decision means before the duty becomes ours to say whether it is right or wrong.*" (Emphasis added.)

We are cognizant of the fact that men, to a great extent, believe what they want to believe; deep-seated preferences and beliefs are difficult to remove from one's mind. The

lawyer who is familiar however with the rule of reason cannot reject as fallacious the evidence of the senses, the physical experience gained by means of the eye and ear, hand and brain. It logically follows that one cannot accept a medley of *ad hoc* conclusions as facts. The City and the State are not beyond good and evil nor are they beyond the necessity of proof.

We respectfully submit that *Brown v. Maryland* and *Hooven & Allison* embody the reasons, the law and unanswerable logic in support of our position. We are aware of the fact that thoughtful thinking is a process, a ladder, a means to reach the proper legal conclusions.

We submit that the material facts in our case, in the light of the language of the Supreme Court in *Hooven & Allison* fully support our position. We categorically deny appellee's contention that a designation of appellants as "buyer" and the authorized agent of the foreign mill as "seller" affects the merits of this case. We further deny that the simple, compact, logical statement of the law which carry conviction and force in *Hooven & Allison* can be characterized as "mere dicta".

We maintain that the *Hooven & Allison* and *Brown* decisions embody the command of the United States Supreme Court and fully support our legal position.

VII. CONCLUSION

Counsel for Petitioners has failed to advance any new facts or law in the present proceeding. The Michigan Court of Appeals has fully considered the Briefs and arguments of counsel for Petitioners, and the Attorney General, and set aside the ruling of the State Tax Commission. The Attorney General since then abandoned the contest and failed to join counsel for Petitioners in the present proceeding.

The Michigan Supreme Court in the denial of the Application for Leave to Appeal held that:

> "Plaintiffs and Appellants have failed to persuade the Court that they have a meritorious basis for appeal or that the decision of the Court of Appeals was clearly erroneous." (See Appendix C, *infra.*)

It is thus obvious that Petitioners' case has received the critical judicial scrutiny of the two highest tribunals in the State of Michigan which held it as without merit.

In the light of the foregoing, the Respondents respectfully pray that the Petition for Writ of Certiorari filed by Petitioners be denied with costs and attorney fees to Respondents.

Respectfully submitted,

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Dated June 30, 1969

APPENDIX A

OPINION OF MICHIGAN COURT OF APPEALS DECEMBER 2, 1968

STATE OF MICHIGAN
COURT OF APPEALS
DIVISION I

City of Detroit, a municipal corporation, Board of Assessors of the City of Detroit,
Plaintiffs-Appellees,
Michigan State Tax Commission,
Appellee,
v.
Kenwal Products Corporation, a Michigan Corporation,
Defendant-Appellant, et al.

No. 3,323

Before: T. G. Kavanagh, P.J., Burns and Fitzgerald, J.J.

Burns, J.

Eleven Detroit steel warehousing companies appeal by leave from tax commission decisions which ordered the value of certain steel to be placed on the city of Detroit personal property assessment rolls. The steel in question was shipped from foreign ports to Detroit where after clearing customs it was delivered to appellants' warehouses and stored for resale. Appellants claim that the steel was immune from property taxes because of US Const, art 1, §10, cl. 2, and cases which have interpreted that provision.

In *Brown v. Maryland* (1827), 25 US 419 (6 L ed 678), the Supreme Court invalidated a state licensing tax and held that a state could not tax imports as long as the property remained in its original form or package. *Low v. Austin* (1872), 80 US 29 (20 L ed 517), expanded the principles of *Brown v. Maryland* to prohibit states from levying *ad valorem* taxes on goods which have not lost their character as imports. See also *City of Detroit v. Lake Superior Paper Company* (1918), 202 Mich 22. Subsequent to *Brown v. Maryland, supra, it has become well-established* that imports lose their constitutional immunity when the importer (1) sells them or (2) "breaks up the packages" or (3) puts them to the use for which they were imported. *Youngstown Sheet & Tube Company v. Bowers* (1959), 358 US 534 (79 S Ct 383, 3 L ed 2d 490).

At the time of assessment in the present cases it appears that the imported steel was in its original package and that it was not being put to any use for which it was imported. The city of Detroit contends, and the tax commission so held, that domestic based companies imported the steel and sold it to appellants, thereby making the steel lose its character as an import. Appellants argue that they are the importers.

The United States Supreme Court spoke to the issue of who is an importer in *Hooven & Allison Company v. Evatt* (1945), 324 US 652, 663, 664 (65 S Ct 870, 89 L ed 1252):

> "When the merchandise is brought from another country to this, the extent of its immunity from state taxation turns on the essential nature of the transaction, considered in the light of the constitutional purpose, and not on the formalities with which the importation is conducted or on the technical procedures by which it is effected. It is common knowledge to lawyers and businessmen that vast quantities of merchan-

dise are annually imported into this country by purchasers resident here, for sale or manufacture here. Sometimes the buyer completes the purchase abroad, in person, and ships to this country; sometimes, as in this case, the purchase is on unsecured credit, but more often it is under contracts by which the vendor reserves in himself or his agent or a banker a lien or title as security for payment of the purchase price on or after arrival. To say that the purchaser is any the less an importer in the one case than in the others, is to ignore the constitutional purpose and substitute form for substance. * * *

"It is enough for present purposes that the merchandise in this case was imported; and that petitioner was the efficient cause of its importation, the purpose and effect of which was petitioner's acquisition of the merchandise for its manufacture into finished goods. We conclude that petitioner was the importer, and that the merchandise in its hands was entitled to the constitutional tax immunity, surviving delivery of the imports to it."

There are many factual similarities between the *Hooven Case, supra,* and these consolidated steel cases. In both instances the taxpayer placed orders with domestic corporate intermediaries for merchandise which originated in a foreign country. The price included charges for ocean freight, insurance, and customs. The goods were specifically marked when they left the foreign port to identify the product for the taxpayer, except in a few instances when the sales took place while the steel was enroute. In *Hooven,* the contract for sale between the domestic seaboard company and the Ohio manufacturer read, "for the account of" the foreign producer. Payment went directly from the Ohio manufacturer to the foreign producer and credit was extended by the foreign company.

In the present cases the appellants contracted with companies which extended their own credit and received all payments for their own accounts. The precise relationship between the domestic companies and the foreign mills (or brokers in some cases) does not clearly appear on the records, but it can be discerned that the domestic concerns entered into separate and distinct contracts with the foreign sellers.

There are two transactions involved in the *Kenwal Case* that differ from the other transactions in these consolidated cases. Kenwal entered into a joint venture with M. W. Zack Metal Company and the Donovan Wire & Iron Company. Zack and Donovan each ordered an entire shipload of steel through intermediaries, with the agreement that Kenwal would participate by taking half of each shipload. For convenience, all of the documents were made in the names of Zack and Donovan. We see no reason to treat these transactions any differently than the other sales involved in these consolidated cases.

In determining who is the "efficient cause" of importation in the constitutional sense, we must look beyond matters of form to the substance of the transaction. Perhaps the most significant substantive matter which the Supreme Court emphasized in *Hooven, supra,* 661, was the fact that performance of the contract called for, and necessarily resulted in, importation of the merchandise. Appellants' contracts with the domestic intermediaries specified that the steel was to be shipped from a foreign country or was already en route directly to the appellants. Performance of these contracts, then, as in *Hooven,* called for, and necessarily resulted in, importation. In our opinion the transactions in these cases fall within the scope of the Hooven decision.

The orders of the tax commission are vacated.

APPENDIX B

ORDERS OF MICHIGAN STATE TAX COMMISSION

(Two orders applicable to the assessments placed against Ambassador Steel Company are set forth which orders are typical of those issued in the case of each of respondents herein for 1966, with exception of several against whom only a single order was issued.)

STATE OF MICHIGAN

Before the Michigan State Tax Commission

At a meeting of the Michigan State Tax Commission held on the 26th day of January, 1967 at Lansing, Michigan.

In Re Petition No. 22-5610 of the Detroit Board of Assessors, City of Detroit, County of Wayne, State of Michigan, received on June 20, 1966, requesting to place upon the assessment roll property omitted therefrom, consisting of personal property in the form of steel inventory, belonging to Ambassador Steel Company, 12211 Coyle Street, Detroit, Michigan.

The petitioner, the Detroit Board of Assessors, contends that personal property was erroneously omitted from the assessment rolls and the same should be placed upon the rolls in accordance with the provisions of Sec. 211.152 C.L. of Mich. 1948.

The Commission accepted the petition for examination and caused an investigation to be made to determine the assessable value of the personal property and to determine to whom the property should be assessed. A hearing was held on August 1, 1966 at Detroit, Michigan, at which

hearing the taxpayer of the property in question was represented.

After consideration of the data presented at the hearing and the examination and investigation of the Commission's staff along with other written documents and exhibits of the taxpayer and the Detroit Board of Assessors the Commission finds:

1. The Detroit Board of Assessors in Petition No. 22-5610 asks the current assessment of $289,380 to be raised to $530,050 because of additional value revealed in an audit by a member of the Board of Assessors staff.

2. The investigation revealed that the issue involved in this dispute is not one of valuation but is a legal issue concerning the assessability of certain imported steel inventories. The city of Detroit claims that the steel in question has been purchased by the taxpayer from an importer and thereby has entered the channels of trade and become subject to ad valorem taxation. The taxpayer on the other hand claims that they are the "importers" and as such the steel in question retains its immunity from ad valorem taxation as an "imported product" under Article I, Section 10, Chapter 2 of the United States Constitution which reads:

> "No State shall, without the consent of the Congress, lay any imports (sic) or duties on Imports or Exports. . . ."

3. Taxable property, both real and personal in the city of Detroit are assessed at a significant range of from 41% to 56% of their true cash value, or a properly weighted mathematical average for the local unit of 45.25% which is sustained by an equalization study made by the Commission in 1963, which data has been kept routinely cur-

rent by the Commission and checked in the field by the Commission's staff.

4. That where property was omitted from the assessment roll erroneously it should be placed upon the assessment roll as provided in Sec. 211.152 C. L. of Mich. 1948.

After these findings of facts and the consideration of all the information contained therein the Commission still has reservations. On the basis of the documents, exhibits, etc., there are doubts as to whether or not the goods in question are "imports" under Article I, Section 10, Chapter 2 of the United States Constitution. Taxation is the rule and there is a presumption that property is taxable unless it clearly appears that constitutional provisions or statutes grant an immunity from taxation. The burden of proof to establish immunity from ad valorem taxation rests on the taxpayer. The Commission is of the opinion that the taxpayer has failed to prove its claim of immunity from taxation based on the theory of imported goods. Therefore, the petition of the Board of Assessors of the city of Detroit is granted with reservation as to the final assessed valuation. This reservation is based upon the utilization of the correct assessment ratio to apply to true cash value in order to achieve the correct assessed valuation. It is determined in the opinion of the Commission that the undisputed true cash value of the property involved is $1,060,100 and the assessment level is 45.25% of true cash value. Therefore, appellant's assessment should be $479,700. Since the proposed assessment per Petition No. 22-5610 is $530,050 it is clearly apparent that the proposed assessment is significantly above and is not in accordance to the true cash value reduced to the local assessment level and the true cash value of all other real and personal property within the city of Detroit, reduced to such assessment level. The Commission fully appreciates

the fact that the question presented in the petition is of a legal nature. We readily acknowledge that the courts are best adapted to resolving the legal questions involved just as the Commission believes itself to be the most proficient in questions of valuation. Should the taxpayer be dissatisfied and seek further relief available under the law, the Commission directs his attention to Sec. 211.53 of the C.L. of Mich. 1948, or an action for a declaration of rights.

Wherefore, it is hereby ordered that the amount of $479,700 be placed upon the assessment roll as the true and lawful value of such property.

February 2, 1967

Robert L. Purnell, Chairman
R. Gerald Barr, Commissioner
Ward G. Dexel, Commissioner

I hereby certify that this is a true copy of the order of the State Tax Commission on file in the State Tax Commission office as provided by Act 147, P.A. 1960.

/s/ Edward W. Kane
Secretary

STATE OF MICHIGAN

Before the Michigan State Tax Commission

At a meeting of the Michigan State Tax Commission held on the 26th day of January, 1967 at Lansing, Michigan.

In Re Petition No. 22-5611 of the Detroit Board of Assessors, City of Detroit, County of Wayne, State of Michigan, received on June 20, 1966, requesting to place upon the assessment roll property omitted therefrom, consisting of personal property in the form of steel inventory, to be assessed to Ambassador Steel Company, 12211 Coyle Street, Detroit.

The petitioner, the Detroit Board of Assessors, contends that personal property was erroneously omitted from the assessment rolls and the same should be placed upon the rolls in accordance with the provisions of Sec. 211.152 C. L. of Mich. 1948.

The Commission accepted the petition for examination and caused an investigation to be made to determine the assessable value of the personal property and to determine to whom the property should be assessed. A hearing was held on August 1, 1966 at Detroit, Michigan, at which hearing the taxpayer of the property in question was represented.

After consideration of the data presented at the hearing and the examination and investigation of the Commission's staff along with other written documents and exhibits of the taxpayer and the Detroit Board of Assessors the Commission finds:

1. The Detroit Board of Assessors in Petition No. 22-5611 asks the current assessment of $415,730 to be lowered to $414,610 because of information revealed in an audit by a member of the Board of Assessors staff.

2. The investigation revealed that the issue involved in this dispute is not one of valuation but is a legal issue concerning the assessability of certain imported steel inventories. The city of Detroit claims that the steel in question has been purchased by the taxpayer on a title retaining sales contract from an importer whereby the material has been committed to the exclusive use of the taxpayer as long as he adheres the terms of the contract and thereby the material has entered the channels of trade and become subject to ad valorem taxation. The taxpayer on the other hand claims that the title has never passed to them from the importers and as such the steel in question retains its immunity from ad valorem taxation as an "imported product" under Article I, Section 10, Chapter 2 of the United States Constitution which reads:

> "No State shall, without the consent of the Congress, lay any imports (sic) or duties on Imports or Exports. . . ."

3. Taxable property, both real and personal in the city of Detroit are assessed at a significant range of from 41% to 56% of their true cash value, or a properly weighted mathematical average for the local unit of 45.25% which is sustained by an equalization study made by the Commission in 1963, which data has been kept routinely current by the Commission and checked in the field by the Commission's staff.

4. That where property was omitted from the assessment roll erroneously it should be placed upon the assessment roll as provided in Sec. 211.152 C.L. of Mich. 1948.

After these findings of facts and the consideration of all the information contained therein the Commission still has reservations. On the basis of the documents, exhibits, etc., there are doubts as to whether or not the goods in

question are "imports" under Article I, Section 10, Chapter 2 of the United States Constitution. Taxation is the rule and there is a presumption that property is taxable unless it clearly appears that constitutional provisions or statutes grant an immunity from taxation. The burden of proof to establish immunity from ad valorem taxation rests on the taxpayer. The Commission is of the opinion that the taxpayer has failed to prove its claim of immunity from taxation based on the theory of imported goods. Therefore, the petition of the Board of Assessors of the city of Detroit is granted with reservation as to the final assessed valuation. This reservation is based upon the utilization of the correct assessment ratio to apply to true cash value in order to achieve the correct assessed valuation. It is determined in the opinion the Commission that the undisputed true cash value of the property involved is $829,220 and the assessment level is 45.25% of true cash value. Therefore, appellant's assessment should be $375,200. Since the proposed assessment per Petition No. 22-5611 is $414,610 it is clearly apparent that the proposed assessment is significantly above and is not in accordance to the true cash value reduced to the local assessment level and the true cash value of all other real and personal property within the city of Detroit, reduced to such assessment level. The Commission fully appreciates the fact that the question presented in the petition is of a legal nature. We readily acknowledge that the courts are best adapted to resolving the legal questions involved just as the Commission believes itself to be the most proficient in questions of valuation. Should the taxpayer be dissatisfied and seek further relief available under the law, the Commission directs his attention to Sec. 211.53 of the C. L. of Mich. 1948, or in an action for a declaration of rights.

Wherefore, it is hereby ordered that the amount of $375,200 be placed upon the assessment roll as the true and lawful value of such property.

February 2, 1967.

Robert L. Purnell, Chairman
R. Gerald Barr, Commissioner
Ward G. Dexel, Commissioner

I hereby certify that this is a true copy of the order of the State Tax Commission on file in the State Tax Commission office as provided by Act 147, P.A. 1960.

/s/ Edward W. Kane
Secretary

NOTE: These 2 orders cover Respondents Ambassador Steel and Ewald Steel.

STATE OF MICHIGAN

Before the Michigan State Tax Commission

At a meeting of the Michigan State Tax Commission held on the 26th day of January, 1967, at Lansing, Michigan.

In Re Petition No. 22-2339 of the Detroit Board of Assessors, City of Detroit, County of Wayne, State of Michigan, received on June 30, 1966, requesting to place upon the assessment roll property omitted therefrom, consisting of personal property in the form of steel inventory, belonging to Ewald Steel Company, 12995 Hillview, Detroit, Michigan.

The petitioner, the Detroit Board of Assessors, contends that personal property was erroneously omitted from the

assessment rolls and the same should be placed upon the rolls in accordance with the provisions of Sec. 211.152 C. L. of Mich. 1948.

The Commission accepted the petition for examination and caused an investigation to be made to determine the assessable value of the personal property and to determine to whom the property should be assessed. A hearing was held on August 1, 1966 at Detroit, Michigan, at which hearing the taxpayer of the property in question was represented by counsel.

After consideration of the data presented at the hearing and the examination and investigation of the Commission's staff along with other written documents and exhibits of the taxpayer and the Detroit Board of Assessors the Commission finds:

1. The Detroit Board of Assessors in Petition No. 22-2339 asks the current assessment of $650,000 to be raised to $889,700 because of additional value revealed in an audit by a member of the Board of Assessors staff.

2. The investigation revealed that the issue involved in this dispute is not one of valuation but is a legal issue concerning the assessability of certain imported steel inventories. The city of Detroit claims that the steel in question has been purchased by the taxpayer from an importer and thereby has entered the channels of trade and become subject to ad valorem taxation. The taxpayer on the other hand claims that they are the "importers" and as such the steel in question retains its immunity from ad valorem taxation as an imported product" under Article I, Section 10, Chapter 2 of the United States Constitution which reads:

"No State shall, without the consent of the Congress, lay any imports (sic) or duties on Imports or Exports . . ."

3. Taxable property, both real and personal in the city of Detroit are assessed at a significant range of from 41% to 56% of their true cash value or a properly weighted mathematical average for the local unit of 45.25% which is sustained by an equalization study made by the Commission in 1963, which data has been kept routinely current by the Commission and checked in the field by the Commission's staff.

4. That where property was omitted from the assessment roll erroneously it should be placed upon the assessment rolls as provided in Sec. 211.152 C. L. of Mich. 1948.

After these findings of facts and the consideration of all the information contained therein the Commission still has reservations. On the basis of the documents, exhibits, etc., there are doubts as to whether or not the goods in question are "imports" under Article I, Section 10, Chapter 2 of the United States Constitution. Taxation is the rule and there is a presumption that property is taxable unless it clearly appears that constitutional provisions or statutes grant an immunity from taxation. The burden of proof to establish immunity from ad valorem taxation rests on the taxpayer. The Commission is of the opinion that the taxpayer has failed to prove its claim of immunity from taxation based on the theory of imported goods. Therefore, the petition of the Board of Assessors of the city of Detroit is granted with reservation as to the final assessed valuation. This reservation is based upon the utilization of the correct assessment ratio to apply to true cash value in order to achieve the correct assessed valuation. It is determined in the opinion of the Commission that the undis-

puted true cash value of the property involved is $1,779,390 and the assessment level is 45.25% of true cash value. Therefore, appellant's assessment should be $805,200. Since the proposed assessment per Petition No. 22-2339 is $889,700 it is clearly apparent that the proposed assessment is significantly above and is not in accordance to the true cash value reduced to the local assessment level and the true cash value of all other real and personal property within the city of Detroit, reduced to such assessment level. The Commission fully appreciates the fact that the question presented in the petition is of a legal nature. We readily acknowledge that the courts are best adapted to resolving the legal questions involved just as the Commission believes itself to be the most proficient in questions of valuation. Should the taxpayer be dissatisfied and seek further relief available under the law, the Commission directs his attention to Sec. 211.53 of the C. L. of Mich. 1948, or in an action for a declaration of rights.

Wherefore, it is hereby ordered that the amount of $805,200 be placed upon the assessment roll as the true and lawful value of such property.

February 1, 1967.

Robert L. Purnell, Chairman
R. Gerald Barr, Commissioner
Ward G. Dexel, Commissioner

STATE OF MICHIGAN

Before the Michigan State Tax Commission

At a meeting of the Michigan State Tax Commission held on the 26th day of January, 1967, at Lansing, Michigan.

In Re Petition No. 22-2338 of the Detroit Board of Assessors, City of Detroit, County of Wayne, State of Michigan, received on June 30, 1966, requesting to place upon the assessment roll property omitted therefrom, consisting of personal property in the form of steel inventory, belonging to Ewald Steel Company, 12995 Hillview, Detroit, Michigan.

The petitioner, the Detroit Board of Assessors, contends that personal property was erroneously omitted from the assessment rolls and the same should be placed upon the rolls in accordance with the provisions of Sec. 211.152 C. L. of Mich. 1948.

The Commission accepted the petition for examination and caused an investigation to be made to determine the assessable value of the personal property and to determine to whom the property should be assessed. A hearing was held on August 1, 1966 at Detroit, Michigan, at which hearing the taxpayer of the property in question was represented by counsel.

After consideration of the data presented at the hearing and the examination and investigation of the Commission's staff along with other written documents and exhibits of the taxpayer and the Detroit Board of Assessors the Commission finds:

1. The Detroit Board of Assessors in Petition No. 22-2338 asks the current assessment of $158,720 to be raised

to $669,050 because of additional value revealed in an audit by a member of the Board of Assessors staff. This requested assessment of $669,050 was revised at the hearing to $643,160.

2. The investigation revealed that the issue involved in this dispute is not one of valuation but is a legal issue concerning the assessability of certain imported steel inventories. The city of Detroit claims that the steel in question has been purchased by the taxpayer from an importer and thereby has entered the channels of trade and become subject to ad valorem taxation. The taxpayer on the other hand claims that they are the "importers" and as such the steel in question retains its immunity from ad valorem taxation as an imported product" under Article I, Section 10, Chapter 2 of the United States Constitution which reads:

> "No State shall, without the consent of the Congress, lay any imports (sic) or duties on Imports and Exports . . ."

3. Taxable property, both real and personal in the city of Detroit are assessed at a significant range of from 41% to 56% of their true cash value or a properly weighted mathematical average for the local unit of 45.25% which is sustained by an equalization study made by the Commission in 1963, which data has been kept routinely current by the Commission and checked in the field by the Commission's staff.

4. That where property was omitted from the assessment roll erroneously it should be placed upon the assessment roll as provided in Sec. 211.152 C. L. of Mich. 1948.

After these findings of facts and the consideration of all the information contained therein the Commission still has reservations. On the basis of the documents, exhibits, etc.,

there are doubts as to whether or not the goods in question are "imports" under Article I, Section 10, Chapter 2 of the United States Constitution. Taxation is the rule and there is a presumption that property is taxable unless it clearly appears that constitutional provisions or statutes grant an immunity from taxation. The burden of proof to establish immunity from ad valorem taxation rests on the taxpayer. The Commission is of the opinion that the taxpayer has failed to prove its claim of immunity from taxation based on the theory of imported goods. Therefore, the petition of the Board of Assessors of the city of Detroit is granted with reservation as to the final assessed valuation. This reservation is based upon the utilization of the correct assessment ratio to apply to true cash value in order to achieve the correct assessed valuation. It is determined in the opinion of the Commission that the undisputed true cash value of the property involved is $1,286,320 and the assessment level is 45.25% of true cash value. Therefore, appellant's assessment should be $582,100. Since the proposed assessment per Petition No. 22-2338 is $643,160 it is clearly apparent that the proposed assessment is significantly above and is not in accordance to the true cash value reduced to the local assessment level and the true cash value of all other real and personal property within the city of Detroit, reduced to such assessment level. The Commission fully appreciates the fact that the question presented in the petition is of a legal nature. We readily acknowledge that the courts are best adapted to resolving the legal questions involved just as the Commission believes itself to be the most proficient in questions of valuation. Should the taxpayer be dissatified and seek further relief available under the law, the Commission directs his attention to Sec. 211.53 of the C.L. of Mich. 1948, or in an action for a declaration of rights.

Wherefore, it is hereby ordered that the amount of $582,-100 be placed upon the assessment roll as the true and lawful value of such property.

February 1, 1967.

Robert L. Purnell, Chairman
R. Gerald Barr, Commissioner
Ward G. Dexel, Commissioner

APPENDIX C

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 20th day of March in the year of our Lord one thousand nine hundred and sixty-nine.

Present: the Honorable Thomas E. Brennan, Chief Justice, John R. Dethmers, Harry F. Kelly, Eugene F. Black, Thomas M. Kavanagh, Paul L. Adams, Thomas G. Kavanagh, Associate Justices.

On order of the Court (T. G. Kavanagh, J., not participating), the application for leave to appeal is considered, and the same is hereby denied, as plaintiffs and appellants have failed to persuade the Court that they have a meritorious basis for appeal or that the decision of the Court of Appeals was clearly erroneous. Plaintiffs' and appellants' request for a stay of proceedings is denied, as thereby being moot.

State of Michigan—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 20th day of March in the year of our Lord one thousand nine hundred and sixty-nine.

Harold Hoag,
Deputy Clerk.

(Seal)

APPENDIX D

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 19th day of May in the year of our Lord one thousand nine hundred and sixty-nine.

Present the Honorable Thomas E. Brennan, Chief Justice, John R. Dethmers, Harry F. Kelly, Eugene F. Black, Thomas M. Kavanagh, Paul L. Adams, Thomas G. Kavanagh, Associate Justices.

On order of the Court, the motion by the city of Detroit and the Board of Assessors of the city of Detroit, plaintiffs and appellants, to stay enforcement of an order of this Court pending petition for certiorari to the Supreme Court of the United States is considered, and the same is hereby denied, as no immediate emergency has been alleged or shown.

State of Michigan—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 21st day of May in the year of our Lord one thousand nine hundred and sixty-nine.

Donald F. Winters,
Clerk.

(Seal)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 280

CITY OF DETROIT, a municipal corporation,
BOARD OF ASSESSORS OF THE CITY OF DETROIT,
Petitioners-Plaintiffs,
MICHIGAN STATE TAX COMMISSION,
Appellant,
v.
AMBASSADOR STEEL COMPANY,
a Michigan corporation,
ADVANCE STEEL COMPANY,
a Michigan corporation,
AMERICAN STEEL CORPORATION,
a Michigan corporation,
BARSTEEL CORPORATION,
a Michigan corporation,
CONTRACTORS STEEL COMPANY,
a Michigan corporation,
CRAFT STEEL & SUPPLY COMPANY, INC.,
a Michigan corporation,
EWALD STEEL COMPANY,
a Michigan corporation,
KASLE STEEL CORPORATION,
a Michigan corporation,
KENWAL PRODUCTS CORPORATION,
a Michigan corporation,
PARAGON STEEL CORPORATION,
a Michigan corporation,
TITAN STEEL COMPANY,
a Michigan corporation,
Respondents.

BRIEF OF RESPONDENT KASLE STEEL CORPORATION, A MICHIGAN CORPORATION, IN OPPOSITION TO PETITION OF CITY OF DETROIT, BOARD OF ASSESSORS OF THE CITY OF DETROIT, FOR A WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS, DIVISION 1

RE. A. OPINIONS BELOW

The statement of Petitioners under the above heading which reads "The earlier opinion of Michigan State Tax Commission dated February 1, 1967, is unreported and is printed in Appendix B attached hereto" is not correct. The Opinion of the Michigan State Tax Commission which pertains to Respondent Kasle Steel Corporation was not attached to, nor was it printed in, Petitioners' Appendix B. But Respondent Kasle Steel Corporation has set out in its Appendix A (which is a part of this Brief) the Opinion of the Michigan State Tax Commission dated February 1, 1967 which was rendered by said Michigan State Tax Commission with respect to Respondent Kasle Steel Corporation and it is hereby made a part of this Brief of Respondent Kasle Steel Corporation.

RE B. JURISDICTION

It is respectfully submitted that this Court does not have jurisdiction to grant the Petition For Certiorari which was filed by the Petitioners City of Detroit and Board of Assessors of the City of Detroit in this cause. Jurisdiction of this Court in matters involving Writs of Certiorari are governed by Title 28 Section 2101 of the United States Code which provides that Petitions for Certiorari must be filed within 90 days from the date of the Order of the lower Court. It should be noted that the Order of the Michigan Supreme Court was entered on March 20, 1969 and the 90 day period should have ended no later than June 20, 1969. We are informed and verily believe that the Petition filed in this cause was not filed within the 90 day period and, therefore, should not be granted by this Court.

If this Court should determine that said Petition For Writ of Certiorari was timely filed, in that event the following Brief of Respondent Kasle Steel Corporation in Opposition to the Petition of City of Detroit, Board of Assessors of the City of Detroit For Writ of Certiorari to Michigan Court of Appeals, Division 1, should be considered by this Court.

RE C. QUESTIONS PRESENTED FOR REVIEW

Respondent Kasle Steel Corporation states that Petitioners' "Questions Presented For Review" as they have been stated by Petitioners in their "C. Questions For Review" are not correctly or properly stated nor are they under the facts in this matter as shown by the Record of Kasle Steel Corporation Questions to be reviewed, because those Questions are not competent, germane or applicable as to Respondent Kasle Steel Corporation, and because the "Opinion of Michigan Court of Appeals December 2, 1968", which appears in Petitioners' Appendix A, sets out facts and law which are applicable to the foreign produced (in Japan) steels which were purchased by Kasle Steel Corporation from the foreign producer (in Japan) and which steels were imported by said Kasle Steel Corporation from Japan into the United States, those steel purchases having been arranged and brought about by contacts and negotiations which were had by and between Kasle Steel Corporation as the purchaser from said foreign producer in Japan of said steel with the United States resident agents of the foreign steel producer which agents acted as agents for the foreign steel producer and did not act as principals or for themselves, nor did they act as agents for Kasle Steel Corporation, the Prin-

cipal being the foreign steel producer for whom the United States resident agents acted; and the correct and true facts are set out in the Record of Kasle Steel Corporation; and the law applicable to those correct and true facts is set out and stated in a part of the Opinion and Decision of the Court of Appeals of Michigan of December 2, 1968, in a part of which Opinion and Decision said Court of Appeals (Michigan Court of Appeals) stated:

> "The United States Supreme Court spoke to the issue of who is an importer in Hooven & Allison Company v. Evatt (1945), 324 US 652, 663, 664 (65 S Ct 870, 89 L ed 1252):
>
> 'When the merchandise is brought from another country to this, the extent of its immunity from state taxation turns on the essential nature of the transaction, considered in the light of the constitutional purpose, and not on the formalities with which the importation is conducted or on the technical procedures by which it is effected. It is common knowledge to lawyers and businessmen that vast quantities of merchandise are annually imported into this country by purchasers resident here, for sale or manufacture here. Sometimes the buyer completes the purchase abroad, in person, and ships to this country; sometimes, as in this case, the purchase is on unsecured credit, but more often it is under contracts by which the vendor reserves in himself or his agent or a banker a lien or title as security for payment of the purchase price on or after arrival. To say that the purchaser is any the less an importer in the one case than in the others, is to ignore the constitutional purpose and substitute form for substance. * * *
>
> 'It is enough for present purposes that the merchandise in this case was imported, and that petitioner was the efficient cause of its importation,

the purpose and effect of which was petitioner's acquisition of the merchandise for its manufacture into finished goods. We conclude that petitioner was the importer, and that the merchandise in its hands was entitled to the constitutional tax immunity, surviving delivery of the imports to it.'

"There are many factual similarities between the Hooven Case, *supra*, and these consolidated steel cases. In both instances the taxpayer placed orders with domestic corporate intermediaries for merchandise which originated in a foreign country. The price included charges for ocean freight, insurance and customs. The goods were specifically marked when they left the foreign port to identify the product for the taxpayer . . .

"In determining who is the 'efficient cause' of importation in the constitutional sense, we must look beyond matters of form to the substance of the transaction. Perhaps the most significant substantive matter which the Supreme Court emphasized in Hooven, *supra*, 661, was the fact that performance of the contract called for, and necessarily resulted in, importation of the merchandise. Appellants' contracts with the domestic intermediaries specified that the steel was to be shipped from a foreign country or was already en route directly to the appellants. Performance of these contracts then, as in Hooven, called for, and necessarily resulted in, importation. In our opinion these cases fall within the scope of the Hooven decision."

RE F. WHAT THIS CASE DOES NOT INVOLVE

Respondent Kasle Steel Corporation denies all of the statements which Petitioners have made in their Petition for Writ of Certiorari under their heading which reads "F. What This Case Does Not Involve".

Respondent States What This Case Does Involve and Show

Respondent Kasle Steel Corporation contends and has proven as shown by its Record:

(1) That Respondent Kasle Steel Corporation purchased from Fuji Iron & Steel Co., Ltd., of Tokyo, Japan, which was the principal and the steel producer in Japan, through Nichimen and Okaya, respectively, who were the United States resident agents of, and who acted as agents for, the principal Fuji Iron & Steel Co., Ltd., which was the producer in Japan of the steels which were purchased by said Kasle Steel Corporation, and that those steels were imported by Respondent Kasle Steel Corporation from Japan into the United States; and

(2) That under the Opinion and Decision of the Supreme Court of the United States in the case of *Hooven & Allison v. Evatt* (1945), 324 US 652 and the constitutional provisions contained in the Constitution of the United States of and for immunity (freedom) of and from taxation of imports from foreign countries the said foreign produced steels which were purchased and imported by Respondent Kasle Steel Corporation were immune from taxation by any state or anyone else except the United States.

RE G. REASONS FOR GRANTING THE WRIT

The alleged, by Petitioners, (a) Pending Litigation, (b) Failure to Apply Constitutional Principles to Facts Herein, (c) Constitutional Safeguards Overlooked By Court Below and (d) Restatement Urged of Import-Export Immunity Doctrine are not applicable to, nor are they germane to, nor are they competent with respect to, nor can they have any application to, the facts as shown by the Record of Respondent Kasle Steel Corporation, and none of Petitioners' "G. Reasons For Granting The Writ" apply to, can apply to, nor can they affect the legal rights of, Respondent Kasle Steel Corporation whose rights have been determined by the Michigan Court of Appeals and which determination is based upon the Record of Respondent Kasle Steel Corporation and upon the decision and holding in the *Hooven & Allison v. Evatt* case, *supra*, and none of Petitioners' assumed, speculative and unproven "G. Reasons for Granting The Writ" can be of any assistance to this Court.

BRIEF OF RESPONDENT KASLE STEEL CORPORATION, A MICHIGAN CORPORATION, IN OPPOSITION TO PETITION OF CITY OF DETROIT, BOARD OF ASSESSORS OF THE CITY OF DETROIT, WHOSE ATTORNEYS HAVE DESIGNATED SAID CITY OF DETROIT AND BOARD OF ASSESSORS OF THE CITY OF DETROIT AS PETITIONERS-PLAINTIFFS, FOR A WRIT OF CERTIORARI TO MICHIGAN COURT OF APPEALS, DIVISION 1

ARGUMENT

It is elementary that the function and purpose of a Writ of Certiorari is to bring to the Court a matter in which an inferior or lower court has exceeded its jurisdiction or has not proceeded according to the essential requirements of law.

A reading of Petitioners-Plaintiffs' Petition For Writ of Certiorari seems to indicate that the obvious purpose of Petitioners' said Petition For Writ of Certiorari is to attempt to have the Supreme Court of the United States review and reverse the decision of the Michigan Court of Appeals, which decided Respondent Kasle Steel Corporation's case and also other cases so that Petitioners City of Detroit and the Board of Assessors of the City of Detroit would be free to impose ad valorem taxes (taxation) on imports of steel which had been produced in foreign countries and which had been imported into the United States and which were and are immune from taxation by the clear and specific provisions of the Constitution of the United States of America.

The Supreme Court of the United States in the case of *Hooven & Allison Company, Petitioner v. William S. Evatt, Tax Commissioner of Ohio* (1945) 324 U.S. 652-694 (65 S. Ct. 870, 89 L. ed. 1252-1293), as before stated,

clearly sets out what essential facts must exist to entitle an importer of foreign produced and imported merchandise to have immunity (freedom) from taxation with respect thereto by anyone except the United States, the constitutional provision for said immunity which is involved in this matter being contained and set out in Article I, Sec. 10, Cl 2 of the United States Constitution, and it reads as follows:

> "No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws; and the net produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress."

Extended testimony and considerable other evidence which is contained in, and/or which is referred to in, the 91 pages of the transcript of the evidence and testimony and in at least 30 Exhibits which were offered in evidence by Respondent Kasle Steel Corporation on and at the Hearing of the Appeal of Respondent Kasle Steel Corporation to the Michigan State Tax Commission makes up the individual or separate Record of Respondent Kasle Steel Corporation, and that Record was before the Michigan Court of Appeals when it heard and considered (in Court of Appeals Case No. 3330) the Appeal of Respondent Kasle Steel Corporation to said Michigan Court of Appeals from the Order of the Michigan State Tax Commission which is dated February 1, 1967 and which mentions a meeting of the Michigan State Tax Commission held on the 26th day of January 1967.

Based upon Respondent Kasle Steel Corporation's separate Record and the application of the pertinent law with respect thereto and the law which is set out in the *Hooven & Allison-Evatt, supra,* case, the Michigan Court of Appeals correctly decided the appeal of Respondent Kasle Steel Corporation from, and it vacated, the said Order of said Michigan State Tax Commission, and the Michigan Court of Appeals, by its decision, held that the steels imported by Respondent Kasle Steel Corporation and other steel importers were immune from taxation by the City of Detroit and Board of Assessors of the City of Detroit.

Subsequently, the City of Detroit, et al., Plaintiffs and Appellants, and Michigan State Tax Commission, Appellant, made application to the Supreme Court of the State of Michigan for leave to appeal to that Court and for a stay of proceedings in the cases which involved the Respondents herein, but said application of Petitioners City of Detroit, Board of Assessors of the City of Detroit and State Tax Commission for leave to appeal to said Supreme Court of Michigan and also for a stay of proceedings was denied by said Supreme Court of Michigan on the 20th day of March 1969 by its Order of that date which Order reads as follows:

> "the application for leave to appeal is considered, and the same is hereby DENIED, as plaintiffs and appellants have failed to persuade the Court that they have a meritorious basis for appeal or that the decision of the Court of Appeals was clearly erroneous. Plaintiffs' and appellants' request for a stay of proceedings is DENIED, as thereby being moot."

The Petitioners for the Writ of Certiorari to the Michigan Court of Appeals are not claiming, nor is there any showing, that the holding and decision of, and in *Hooven & Allison v. Evatt* was disregarded or that it was not con-

sidered by the Michigan Court of Appeals in the Appeal of Respondent Kasle Steel Corporation to that Court, but, on the contrary, the Michigan Court of Appeals decided the Appeal of said Respondent Kasle Steel Corporation in harmony with, and in recognition of the law discussed in, the *Hooven & Allison v. Evatt* case.

Nor is there any claim by Petitioners City of Detroit and Board of Assessors of City of Detroit that no case has yet been decided by the Supreme Court of the United States which determines and holds that Respondent Kasle Steel Corporation is in law under the existing facts entitled to immunity from taxation and that therefore it is necessary for the Supreme Court of the United States to grant Certiorari and to decide such a case, but the fact is (i) that the *Hooven & Allison v. Evatt* case exists and that it has existed for almost 25 years and (ii) that the decision in that case clearly and at length considered and decided the legal point of immunity from taxation of imports, therefore there is no need for any other case or any further decision by the Supreme Court of the United States to hold or show that imports from foreign countries are immune from taxation by anyone except the United States of America.

Further, it is apparent that inasmuch as said Petitioners for Writ of Certiorari have not prevailed or succeeded in the Michigan Court of Appeals and also have not succeeded in obtaining leave to appeal the decision of the Michigan Court of Appeals to the Supreme Court of Michigan they, said Petitioners, are now attempting to get the Supreme Court of the United States (i) to disregard its decision in the *Hooven & Allison v. Evatt* case, (ii) to reopen the question of immunity from taxation of imports and (iii) to render another decision and opinion which will permit Petitioners to levy and impose ad valorem taxes upon and with respect to imports from foreign countries—

something which, as has already been shown, is contrary to said provisions of immunity from taxation which are contained in, and are a part of, the Constitution of the United States and which is also contrary to the decision of the Supreme Court of the United States in the *Hooven & Allison v. Evatt* case.

The evidence, by testimony and exhibits, which is a part of the Record which was made by Respondent Kasle Steel Corporation before the Michigan State Tax Commission and which Record was before the Michigan Court of Appeals, and which is the only Record which can be considered in the litigation and in this matter insofar as Respondent Kasle Steel Corporation is concerned, shows and establishes the facts which existed and which entitled Respondent Kasle Steel Corporation as an importer of foreign produced steel to immunity of and from taxation of the steels which were imported by it from the foreign country of Japan. In other words, Respondent Kasle Steel Corporation's proofs and its Record established, proved and showed (i) that it (Respondent Kasle Steel Corporation) fulfilled and complied with the law of and requirements in the *Hooven & Allison v. Evatt* case and (ii) also that Respondent Kasle Steel Corporation is entitled to immunity from taxation of its imports. The Record of Respondent Kasle Steel Corporation also contains and shows by testimony and also by several exhibits including some exhibits from and on behalf of Fuji Iron & Steel Co., Ltd., the Japanese producer in Japan of the steels which were imported by Respondent Kasle Steel Corporation, that said Kasle Steel Corporation was the purchaser from said Japanese producer (Fuji Iron & Steel Co., Ltd.) of the steels which were imported by Respondent Kasle Steel Corporation from Japan, and said Record of said Kasle Steel Corporation also shows, by testimony and some exhibits

which were offered in evidence by said Kasle Steel Corporation and which contain the statements that "because of historical traditions peculiar to Japan, Japanese manufacturers employ the services of a number of trading companies as their designated agents"; and the Record of Respondent Kasle Steel Corporation also shows (i) that said Fuji Iron & Steel Co., Ltd., the Japanese producer in Japan of the steels which were purchased by said Kasle Steel Corporation from said Fuji Iron & Steel Co., Ltd., was the principal in the transactions and that Nichimen and Okaya, respectively, were the resident agents in the United States of said Fuji Iron & Steel Co., Ltd. (the Japanese producer in Japan of the said steels which were imported by Kasle), and (ii) that said Kasle Steel Corporation was the efficient cause of the importation of said steels from Japan, and (iii) that said Kasle Steel Corporation purchased said steels from Fuji Iron & Steel Co., Ltd., the Japanese producer in Japan of said steels, and not from domestic based companies acting as principals. The Record of Respondent Kasle Steel Corporation, which is large and voluminous, does not support the claims and assertions of the Petitioners for said Writ of Certiorari.

The Supreme Court of the United States may be interested to know that the Michigan Court of Appeals set aside an entire day for hearing the oral arguments of the respective counsel for the respective Respondents which are named above (and who were the Appellants in the Michigan Court of Appeals in said appeals with respect to the commonly called "steel cases" which were before that Court), and also of counsel for the City of Detroit, Board of Assessors and Michigan State Tax Commission, and many of those counsel which also included counsel for Respondent Kasle Steel Corporation argued their respective appeals, and, upon said oral arguments, some of said counsel which included counsel for Respondent Kasle Steel Cor-

poration referred to the facts and to the records as established and made, and which Records were before said Michigan Court of Appeals.

It seems that the Michigan State Tax Commission, which or who is designated by Petitioners City of Detroit and Board of Assessors of the City of Detroit (Petitioners-Plaintiffs) as "Appellant", and which was represented on the Hearing before the Michigan State Tax Commission and on the oral arguments of said appeals which were heard by the Michigan Court of Appeals and also on the Application to the Supreme Court of Michigan for Leave to Appeal to that Court by the Attorney General of the State of Michigan, is not a Petitioner in the Petition of the Petitioners for the Writ of Certiorari which is now before this Court, and it may be that said Michigan State Tax Commission is not one of the applicants and Petitioners for the applied-for Writ of Certiorari, nor is the Attorney General of the State of Michigan shown in said Petition for Writ of Certiorari as attorney for said Michigan State Tax Commission or anyone else.

CONCLUSION

There is no merit to said Petition of the City of Detroit and Board of Assessors for Writ of Certiorari from the Supreme Court of the United States, and there is no need for the Supreme Court of the United States to speak further on the subject of immunity of imports from taxation because the case of *Hooven & Allison v. Evatt* has spoken clearly and at length on the subject of immunity (freedom) from taxation of imports from a foreign country where the merchandise was produced, and said decision and holding of the Michigan Court of Appeals with respect to Respondent Kasle Steel Corporation is in harmony with the

actual facts in the matter as respects respondent Kasle Steel Corporation as shown by its Record, the Michigan Court of Appeals having correctly decided, based upon the Record made by Respondent Kasle Steel Corporation, that the steels produced by the Japanese producer in Japan and which Kasle Steel Corporation purchased from that Japanese producer and which were imported by Respondent Kasle Steel Corporation into the United States were immune from ad valorem taxation by the City of Detroit and Board of Assessors of the City of Detroit.

Therefore, the Petition of Petitioners and Appellants City of Detroit and Board of Assessors of the City of Detroit for Writ of Certiorari is without legal basis and without any merit and it, said Petition of Petitioners for Writ of Certiorari, should be denied, with costs to said Kasle Steel Corporation.

Respectfully submitted,

SEYMOUR J. FRANK,
Attorney for Respondent Kasle Steel Corporation,
3327 Cadillac Tower,
Detroit, Michigan 48226.

Dated: July 7, 1969.

APPENDIX A OF RESPONDENT KASLE STEEL CORPORATION

State of Michigan

Before the Michigan State Tax Commission

At a meeting of the Michigan State Tax Commission held on the 26th day of January, 1967 at Lansing, Michigan.

IN RE PETITION NO. Stge. 389.01 of the Detroit Board of Assessors, City of Detroit, County of Wayne, State of Michigan, received on June 30, 1966, requesting to place upon the assessment roll property omitted therefrom, consisting of personal property in the form of steel inventory, belonging to Kasle Steel Corporation, 4343 Wyoming Avenue, Dearborn, Michigan.

The petitioner, the Detroit Board of Assessors, contends that personal property was erroneously omitted from the assessment rolls and the same should be placed upon the rolls in accordance with the provisions of Sec. 211.152 C. L. of Mich. 1948.

The Commission accepted the petition for examination and caused an investigation to be made to determine the assessable value of the personal property and to determine to whom the property should be assessed. A hearing was held on November 23, 1966 at Detroit, Michigan, at which hearing the taxpayer of the property in question was represented by counsel.

After consideration of the data presented at the hearing and the examination and investigation of the Commission's staff along with other written documents and exhibits of the taxpayer and the Detroit Board of Assessors the Commission finds:

1. The Detroit Board of Assessors in Petition No. Stge. 389.0 asks the current assessment of $ -0- to be raised to $250,500 because of additional value revealed in an audit by a member of the Board of Assessors staff.

2. The investigation revealed that the issue involved in this dispute is not one of valuation but is a legal issue concerning the assessability of certain imported steel inventories. The city of Detroit claims that the steel in question has been purchased by the taxpayer from an importer and thereby has entered the channels of trade and become subject to ad valorem taxation. The taxpayer on the other hand claims that they are the "importers" and as such the steel in question retains its immunity from ad valorem taxation as an "imported product" under Article I, Section 10, Chapter 2 of the United States Constitution which reads:

> "No State shall, without the consent of the Congress, lay any imports (sic) or duties on Imports or Exports . . ."

3. Taxable property, both real and personal in the city of Detroit are assessed at a significant range of from 41% to 56% of their true cash value, or a properly weighted mathematical average for the local unit of 45.25% which is sustained by an equalization study made by the Commission in 1963, which data has been kept routinely current by the Commission and checked in the field by the Commission's staff.

4. That where property was omitted from the assessment roll erroneously it should be placed upon the assessment roll as provided in Sec. 211.152 C. L. of Mich. 1948.

After these findings of facts and the consideration of all the information contained therein the Commission still has reservations. On the basis of the documents, exhibits, etc.,

there are doubts as to whether or not the goods in question are "imports" under Article I, Section 10, Chapter 2 of the United States Constitution. Taxation is the rule and there is a presumption that property is taxable unless it clearly appears that constitutional provisions or statutes grant an immunity from taxation. The burden of proof to establish immunity from ad valorem taxation rests on the taxpayer. The Commission is of the opinion that the taxpayer has failed to prove its claim of immunity from taxation based on the theory of imported goods. Therefore, the petition of the Board of Assessors of the city of Detroit is granted with reservation as to the final assessed valuation. This reservation is based upon the utilization of the correct assessment ratio to apply to true cash value in order to achieve the correct assessed valuation. It is determined in the opinion of the Commission that the undisputed true cash value of the property involved is $501,000 and the assessment level is 45.25% of true cash value. Therefore, appellant's assessment should be $226,700. Since the proposed assessment per Petition No. Stge. 389.01 is $250,500 it is clearly apparent that the proposed assessment is significantly above and is not in accordance to the true cash value reduced to the local assessment level and the true cash value of all other real and personal property within the city of Detroit, reduced to such assessment level. The Commission fully appreciates the fact that the question presented in the petition is of a legal nature. We readily acknowledge that the courts are best adapted to resolving the legal questions involved just as the Commission believes itself to be the most proficient in questions of valuation. Should the taxpayer be dissatisfied and seek further relief available under the law, the Commission directs his attention to Sec. 211.53 of the C. L. of Mich. 1948, or in an action for a declaration of rights.

WHEREFORE, it is hereby ordered that the amount of $226,700 be placed upon the assessment roll as the true and lawful value of such property.

/s/ Robert L. Purnell, Chairman

/s/ R. Gerald Barr, Commissioner

/s/ Ward G. Dexel, Commissioner

February 1, 1967.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 280

CITY OF DETROIT, a municipal corporation,
BOARD OF ASSESSORS OF THE CITY OF DETROIT,
Petitioners-Plaintiffs,
MICHIGAN STATE TAX COMMISSION,
Appellant,
v.
AMBASSADOR STEEL COMPANY,
a Michigan corporation,
ADVANCE STEEL COMPANY,
a Michigan corporation,
AMERICAN STEEL CORPORATION,
a Michigan corporation,
BARSTEEL CORPORATION,
a Michigan corporation,
CONTRACTORS STEEL COMPANY,
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CRAFT STEEL & SUPPLY COMPANY, INC.,
a Michigan corporation,
EWALD STEEL COMPANY,
a Michigan corporation,
KASLE STEEL CORPORATION,
a Michigan corporation,
KENWAL PRODUCTS CORPORATION,
a Michigan corporation,
PARAGON STEEL CORPORATION,
a Michigan corporation,
TITAN STEEL COMPANY,
a Michigan corporation,
Respondents.

BRIEF OF RESPONDENT, PARAGON STEEL CORPORATION, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS, DIVISION 1, AND APPENDIX

(For List of Attorneys, see Inside Front Cover.)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 280

CITY OF DETROIT, a municipal corporation,
BOARD OF ASSESSORS OF THE CITY OF DETROIT,
Petitioners-Plaintiffs,
MICHIGAN STATE TAX COMMISSION,
Appellant,
v.
AMBASSADOR STEEL COMPANY,
a Michigan corporation,
ADVANCE STEEL COMPANY,
a Michigan corporation,
AMERICAN STEEL CORPORATION,
a Michigan corporation,
BARSTEEL CORPORATION,
a Michigan corporation,
CONTRACTORS STEEL COMPANY,
a Michigan corporation,
CRAFT STEEL & SUPPLY COMPANY, INC.,
a Michigan corporation,
EWALD STEEL COMPANY,
a Michigan corporation,
KASLE STEEL CORPORATION,
a Michigan corporation,
KENWAL PRODUCTS CORPORATION,
a Michigan corporation,
PARAGON STEEL CORPORATION,
a Michigan corporation,
TITAN STEEL COMPANY,
a Michigan corporation,
Respondents.

BRIEF OF RESPONDENT, PARAGON STEEL CORPORATION, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS, DIVISION 1, AND APPENDIX

TO: The Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Respondent, Paragon Steel Corporation, respectfully opposes the granting of a writ of certiorari to review the Judgment of the Michigan Court of Appeals, Division 1, entered on December 2, 1968.

INTRODUCTION

Respondent-Appellee appealed from the Michigan State Tax Commission on its individual record as did all the other Respondents named in the Petition. References to the record on Appeal in this Brief are to the record of Respondent, PARAGON STEEL CORPORATION, only.

A. OPINIONS BELOW

Respondent-Appellee submits, in addition to the opinions set forth in the Brief, the Opinion of the Michigan State Tax Commission as to this Respondent in Appendix A and the Opinion of the Michigan Supreme Court in Appendix B.

B. JURISDICTION

Respondent-Appellee denies the statements in the Petition with respect to jurisdiction and states that this Court is without jurisdiction to issue a writ of certiorari because the Petition has failed to comply with the time requirements of 28 U.S.C. 2101 (c) and Rule 22 of the Rules of the Supreme Court.

C. COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

The following questions are presented for review:

1. Has the steel in question retained the indicia of importation at all times so as to retain immunity while in the hands of Respondent-Appellee?

2. Has the Michigan Court of Appeals, Division 1, interpreted and applied the provisions of Article I, Section 10, Clause 2 of the United States Constitution to the facts in this case consistent with the decisions of the United States Supreme Court?

D. CONSTITUTIONAL PROVISIONS INVOLVED

The provision of the United States Constitution directly involved is adequately set forth in the Petition.

E. COUNTER-STATEMENT OF THE CASE

Respondent-Appellee is a Michigan corporation with principal offices located in the City of Detroit. Its business is steel warehousing which is primarily the importation of foreign produced steel into Detroit where it is held for resale to domestic users.

In the ordinary course of business, PARAGON submits general inquiries to foreign steel mills for price and availability of steel for future delivery to it in Detroit. The inquiries are generally through brokers or agents who act either as agents for PARAGON or as agents for a foreign mill. When price and availability are determined, PARAGON submits detailed specifications and chemistry requirements via the agent referred to above. In the usual course of these transactions the steel is in fact not in exist-

ence at the time the order is placed. By way of example, steel is often ordered in November and December for shipment the following summer to accord with the opening and closing of navigation on the Great Lakes. (Record on Appeal, Item 4, Exhibit A; Item 5, pages 139-140.)

The agent who may be acting either for PARAGON, or a mill (usually with offices located in New York City) receives the specifications from PARAGON and transmits them to the mill. The agent also arranges for shipment to the port of Detroit by ship, customs entry, and arranges the method of payment to the mill. The price paid by PARAGON is a landed price including the price of steel, customs, insurance, freight and fees to the agent. When the steel is produced in the foreign country of origin, it is given distinctive markings at the foreign mill to identify it as the PARAGON order. The markings may be either contract numbers, purchase order numbers, or the name PARAGON. Regardless of the type of marking, it is easily and readily identified in the trade as the steel produced to the order of PARAGON (Record on Appeal, Item 4, Exhibit A). The steel is then shipped from the mill to a port (often times Antwerp, Belgium) where it is examined by an independent firm in the employ of PARAGON (Record on Appeal, Item 4, Exhibit A, Tab H) to determine that it is as ordered by PARAGON; after this examination on the dock in Europe, the steel is loaded aboard ship and PARAGON acquires title and is responsible not only for payment but all risks. The steel, until loaded aboard the ship for delivery to PARAGON via the port of Detroit belongs to the mill (Record on Appeal, Item 4, Exhibit A; Item 5, page 142).

The steel is landed at the port of Detroit in its original bundles with original markings and held by PARAGON for resale.

PARAGON does not engage in processing or manufacturing and no claim of this nature has been made at any time by either the Petitioner or the Respondent. Respondent makes no claim of immunity for steel in "broken bundles", purchased on the high seas or purchased from domestic mills.

Respondent filed its 1966 Personal Property Tax on February 20, 1966, reflecting taxable personal property in the amount of $156,840.00. On March 21, 1966, the Board of Review for the City of Detroit upheld the immunity on taxpayer's imported steel and causing assessment rolls for the City of Detroit to reflect taxable personal property of a value of $156,840.00.

The Petition is substantially correct with respect to proceedings before the Michigan State Tax Commission and the Michigan Court of Appeals, Division 1.

ARGUMENT

I.

Respondent-Appellee relies on the express language of Article I, Section 10, Clause 2 of the United States Constitution. The landmark decision of *Brown v. Maryland,* 12 Wheat 419; 6 L. ed. 678 set forth the first comprehensive judicial statement of what an import is for purposes of immunity, when speaking through Chief Justice Marshall the Court stated:

> "While remaining the property of the importer, in the original form or package in which it was imported, a tax upon it is too plainly a duty on import to escape the prohibition in the Constitution."

There is no question with regard to the fact that the steel is imported and that it is held for re-sale in its original

form and package. Respondent-Appellee claims no immunity for steel in "broken bundles" or steel purchased on the high seas.

The thrust of the Petition is twofold. First, that having illegally assessed imported merchandise the City of Detroit is embarrassed by the prospect of having to repay the wronged taxpayer for taxes paid under protest and secondly, that despite the plain meaning of the Constitution, the Petitioner would have the Court focus on obscure mechanics of trade rather than the substance of the transaction.

The first matter deserves no answer.

The second proposition has already been considered and answered by this Court in *Hooven and Allison Co. v. Evatt*, 324 U.S. 652; 89 L. ed. 1252.

> ". . . Petitioner's contracts of purchase are the inducing and efficient cause of bringing the merchandise into the country which is importation. Examination of the documents and consideration of the course of business can leave no doubt that the petitioner not only causes the importation . . ., but that the purpose and necessary consequence of it are to supply petitioner . . ."
>
> "For in determining the meaning and application of the constitutional provisions, we are concerned with matters of substance not of form. When the merchandise is brought from another country to this, the extent of its immunity from state taxation turns on the essential nature of the transaction considered in the light of the constitutional purpose, and not on the formalities with which the importation is conducted or the technical procedures by which it is effected . . ."
>
> ". . . It is evident that the constitutional prohibition envisages the present transaction quite as much as if the petitioner had sent his own agent

> abroad where he had purchased and paid for the merchandise and shipped it to petitioner in this country. The purpose and the result of the transaction are the same in either case . . ."

In the case of *Youngstown Sheet & Tube Co. v. Bowers,* 358 U.S. 534; 3 L. ed 2d 490 (1958) the Court carefully distinguishes that situation from *Brown v. Maryland* and *Hooven & Allison v. Evatt,* pointing out and approving recognition of immunity when imported goods are merely held in a warehouse in their original form and package for resale as opposed to the situation where they are so commingled with the common mass of property as to be indistinguishable. Added to this is that Respondent-Appellee is not a manufacturer stocking raw materials for his own finished product.

In the case of *Department of Revenue v. James B. Beam,* 377 U.S. 341; in dealing with a Kentucky tax on scotch whiskey imported in barrels for resale, where the tax was collected while the whiskey remained in unbroken packages in the hands of the importer and prior to resale or use by the importer, this Court stated:

> "The tax here in question is clearly of a kind prohibited by the Export-Import Clause. *Brown v. Maryland,* 12 Wheat. 419, 6 L.Ed. 678. As this Court stated almost a century ago in *Low v. Austin,* 13 Wall. 29, 20 L.Ed. 517, a case involving a California ad valorem tax on wine imported from France and stored in original cases in a San Francisco warehouse, 'the goods imported do not lose their character as imports, * * * until they have passed from the control of the importer or been broken up by him from their original cases. Whilst retaining their character as imports, a tax upon them, in any shape, is within the constitutional prohibition.'" Id, at 34. See *Hooven & Allison Co. v. Evatt,* 324 U.S. 652, 65 S. Ct. 870, 89 L. Ed. 1252.

ARGUMENT

II.

This case has been the subject of intense scrutiny, both administrative and judicial. The Michigan Personal Property Tax law, Compiled Laws of Michigan 1948, Section 211.29 provides for a Board of Review as does Title VI, Chapter II, Section 5, Charter of the City of Detroit, 1918 (1963 Ed.) as set forth in Appendix C. Simply put, the Board of Review, in this case, the Common Council for the City of Detroit, sitting as a committee of the whole, upon timely application, reviews tax assessments for determination as to legality and/or amount.

Respondent-Appellee on March 21, 1966, was upheld by this Board of Review for the City of Detroit in its contention that the steel claimed immune was not subject to taxation. Thereafter, the assessors appealed to the State Tax Commission which, despite stated "reservations" in its opinion ruled no immunity and directed the Respondent to seek a judicial determination. On the facts as set forth in the Counter-Statement of facts, the Michigan Court of Appeals Division 1, found that Article I, Section 10, Clause 2 of the United States Constitution did in fact apply to this situation and every case set forth in the Petition was considered in connection with the review. The Michigan Supreme Court denied Leave to Appeal in a simple one paragraph Opinion set forth in Appendix B.

While it would be presumptuous to presume to measure the court's discretion, it is true nevertheless that the questions involved have heretofore been determined by this Court, and the decision is in accord with the applicable decisions of this Court. The decision in question is neither in conflict with those of other courts of appeal nor has it

so far departed from the accepted and usual course of judicial proceeding as to call for an exercise of this court's power of supervision.

RELIEF REQUESTED

Wherefore, Respondent-Appellee, Paragon Steel Corporation, respectfully requests that the Petition for Certiorari be denied.

Respectfully submitted,

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Dated: July 15, 1969

APPENDIX A

STATE OF MICHIGAN

BEFORE THE MICHIGAN STATE TAX COMMISSION

At a meeting of the Michigan State Tax Commission held on the 26th day of January, 1967 at Lansing, Michigan.

In Re Petition No. 13-1071 of the Detroit Board of Assessors, City of Detroit, County of Wayne, State of Michigan, received on June 30, 1966, requesting to place upon the assessment roll property omitted therefrom, consisting of personal property in the form of steel inventory, belonging to Paragon Steel Corporation, 111 Adair, Detroit, Michigan.

The petitioner, the Detroit Board of Assessors, contends that personal property was erroneously omitted from the assessment rolls and the same should be placed upon the rolls in accordance with the provisions of Sec. 211.152 C. L. of Mich. 1948.

The Commission accepted the petition for examination and caused an investigation to be made to determine the assessable value of the personal property and to determine to whom the property should be assessed. A hearing was held on November 21, 1966 at Detroit, Michigan, at which hearing the taxpayer of the property in question was represented by counsel.

After consideration of the data presented at the hearing and the examination and investigation of the Commission's staff along with other written documents and exhibits of the taxpayer and the Detroit Board of Assessors the Commission finds:

1. The Detroit Board of Assessors in Petition No. 13-1071 asks the current assessment of $156,840 to be raised to $374,310 because of additional value revealed in an audit by a member of the Board of Assessors staff.

2. The investigation revealed that the issue involved in this dispute is not one of valuation but is a legal issue concerning the assessability of certain imported steel inventories. The city of Detroit claims that the steel in question has been purchased by the taxpayer from an importer and thereby has entered the channels of trade and become subject to ad valorem taxation. The taxpayer on the other hand claims that they are the "importers" and as such the steel in question retains its immunity from ad valorem taxation as an "imported product" under Article I, Section 10, Chapter 2 of the United States Constitution which reads:

> "No State shall, without the consent of the Congress, lay any imports (sic) or duties on Imports or Exports . . ."

3. Taxable property, both real and personal in the city of Detroit are assessed at a significant range of from 41% to 56% of their true cash value, or a properly weighted mathematical average for the local unit of 45.25% which is sustained by an equalization study made by the Commission in 1963, which data has been kept routinely current by the Commission and checked in the field by the Commission's staff.

4. That where property was omitted from the assessment roll erroneously it should be placed upon the assessment roll as provided in Sec. 211.152 C.L. of Mich. 1948.

After these findings of facts and the consideration of all the information contained therein the Commission still has reservations. On the basis of the documents, exhibits,

etc., there are doubts as to whether or not the goods in question are "imports" under Article I, Section 10, Chapter 2 of the United States Constitution. Taxation is the rule and there is a presumption that property is taxable unless it clearly appears that constitutional provisions or statutes grant an immunity from taxation. The burden of proof to establish immunity from ad valorem taxation rests on the taxpayer. The Commission is of the opinion that the taxpayer has failed to prove its claim of immunity from taxation based on the theory of imported goods. Therefore, the petition of the Board of Assessors of the city of Detroit is granted with reservation as to the final assessed valuation. This reservation is based upon the utilization of the correct assessment ratio to apply to true cash value in order to achieve the correct assessed valuation. It is determined in the opinion of the Commission that the true cash value of the property involved is $748,610 and the assessment level is 45.25% of true cash value. Therefore, appellant's assessment should be $338,700. Since the proposed assessment per Petition No. 13-1071 is $374,310 it is clearly apparent that the proposed assessment is significantly above and is not in accordance to the true cash value reduced to the local assessment level and the true cash value of all other real and personal property within the city of Detroit, reduced to such assessment level. The Commission fully appreciates the fact that the question presented in the petition is of a legal nature. We readily acknowledge that the courts are best adapted to resolving the legal questions involved just as the Commission believes itself to be the most proficient in questions of valuation. Should the taxpayer be dissatisfied and seek further relief available under the law, the Commission directs his attention to Sec. 211.53 of the C. L. of Mich. 1948, or in an action for a declaration of rights.

Wherefore, it is hereby ordered that the amount of $338,-700 be placed upon the assessment roll as the true and lawful value of such property.

February 6, 1967

Robert L. Purnell, Chairman

R. Gerald Barr, Commissioner

Ward G. Dexel, Commissioner

I hereby certify that this is a true copy of the order of the State Tax Commission on file in the State Tax Commission office as provided by Act 147, P.A. 1960.

/s/ Edward W. Kane
Secretary

APPENDIX B

ORDER DENYING STAY OF PROCEEDINGS

STATE OF MICHIGAN—SUPREME COURT

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 20th day of March in the year of our Lord one thousand nine hundred and sixty-nine.

Present the Honorable Thomas E. Brennan, Chief Justice, John R. Dethmers, Harry F. Kelly, Eugene F. Black, Thomas M. Kavanagh, Paul L. Adams, Thomas G. Kavanagh, Associate Justices.

On order of the Court (T. G. Kavanagh, J., not participating), the application for leave to appeal is considered, and the same is hereby denied, as plaintiffs and appellants have failed to persuade the Court that they have a meritorious basis for appeal or that the decision of the Court of Appeals was clearly erroneous. Plaintiffs' and appellants' request for a stay of proceedings is denied, as thereby being moot.

State of Michigan—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 20th day of March in the year of our Lord one thousand nine hundred and sixty-nine.

/s/ Harold Hoag,
Deputy Clerk.

APPENDIX C

Section 5, Chapter II, Title VI, Charter of the City of Detroit, 1918 (1963 Ed.)

The common council, after receiving such assessment rolls, shall, at 10:00 A.M. on the Tuesday next following the first Monday in March, 1962, and the same each year thereafter, proceed to consider the same. Any person who has previously complained to the board of assessors as provided in section 21-7-2, considering himself aggrieved by the assessment of his property and the decision of the board of assessors with respect to the grounds specified by the complainant thereon, may appeal to the common council in person or by his legal representative. Such appeal shall be in writing and shall state, specifically, the grounds previously presented to the board of assessors and the matter complained of together with the address of the complainant. No other matter in connection therewith shall be considered by the council.

Such appeal shall be filed on or before the Tuesday following the first Monday in March and may not be filed thereafter. The common council may refer such assessment rolls and appeals to a committee of the council for consideration. The committee shall give notice to any person who has filed an appeal, as above provided, of the time and place of the meeting for the hearing thereof, which notice may be made in writing, by delivering the same to such person or leaving the same at his place of residence or place of business with some person of proper age and discretion, or by mail to the address of such complainant. While acting upon such assessment rolls or appeals, any member or employee of the board of assessors may, and on request of the council or such committee by resolution,

shall, meet with the council or such committee and make such explanations as he may deem requisite in any case. (C. O. 1954, ch. 81, §3; Ord. No. 598-F, §1.)

The common council or committee thereof shall hear and determine all appeals in a summary manner and correct any errors which they may discover in the assessment rolls, shall place thereon the names of any persons and the descriptions of any property not already assessed and assess the same and may increase or diminish any assessment as they see fit; provided, that the council or such committee shall not increase any assessment without giving a reasonable opportunity to persons owning or having charge of the same, if known, to appear and object thereto. The consideration of the assessment rolls and hearing of appeals may be continued from session to session for a period not less then five days or exceeding sixteen days after the date of their delivery to the council. The committee shall make a report to the common council in the premises and the council may adopt, change or amend the same, in whole or in part.

After due consideration thereof, such rolls shall, on or before the first Monday in April, be fully and finally confirmed by the common council, and shall remain as the basis, according to property valuation, of all taxes to be levied and collected in the city until another assessment shall have been made and confirmed as provided in this division. In the event that any date set forth in this division falls on a Sunday or legal holiday, such time shall be extended to the next succeeding business day. (C. O. 1954, ch. 81, §4; Ord. No. 244-G, §1; Ord. No. 246-G, §1; Ord. No. 290-G, §1.)

Compiled Laws of Michigan 1948, Section 211.29, Michigan Statutes Annotated, Section 7.29

Sec. 29. On the Tuesday next following the first Monday in March the board of review of each township shall meet at the office of the supervisor, at which time the supervisor shall submit to said board the assessment roll for the current year, as prepared by him, and the board shall proceed to examine and review the same, and during that day, and the day following, if necessary, said board, of its own motion, or on sufficient cause being shown by any person, shall add to said roll the names of persons, the value of personal property, and the description and value of real property liable to assessment in said township, omitted from such assessment roll; they shall correct all errors in the names of persons, in the descriptions of property upon such roll, and in the assessment and valuation of property thereon, and they shall cause to be done whatever else may be necessary to make said roll comply with the provisions of this act. The roll shall be reviewed according to the facts existing on the tax day. The board shall not add to the roll any property not subject to taxation on the tax day nor shall it remove from the roll any property subject to taxation on said day regardless of any change in the taxable status of such property since such day. The board shall pass upon each valuation and each interest, and shall enter the valuation of each, as fixed by it, in a separate column. The roll as prepared by the supervisor shall stand as approved and adopted as the act of the board of review, except as changed by a vote as herein provided. If for any cause a quorum does not assemble during the days above mentioned, the roll as prepared by the supervisor shall stand as if approved by the board of review. Notice of the date, time and place

of the meeting of the board of review shall be given at least 1 week prior to such meeting by publication in a generally circulated newspaper serving the area. Such notice shall appear in 3 successive issues of the newspaper where available; otherwise, by the posting of such notice in 5 conspicuous places in the township.

Whenever the board of review makes a change in the assessment of property or adds property to the assessment roll, the person chargeable with such assessment shall be promptly notified in such a manner as will assure him opportunity to attend the second meeting of the board of review provided in section 30 of this act.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 280

Office Supreme Court, U.S.
FILED
JUL 19 1969
DAVIS, CLERK

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Respondents.

BRIEF OF RESPONDENT, AMERICAN STEEL CORPORATION, IN OPPOSITION TO GRANTING OF THE PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS, DIVISION 1 AND APPENDIX

(For List of Attorneys See Inside Front Cover)

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OPINIONS BELOW

In addition to the opinions referred to in the petition, the decision of the Michigan State Tax Commission, applicable to this Respondent, dated February 3, 1967, is attached as Appendix A.

JURISDICTION

(1) Involved here is Petitioners' Petition for Writ of Certiorari to review the decision of the Michigan Court of Appeals which vacated certain assessments on imported steel placed on Detroit's 1966 personal property rolls as to taxpayers (Respondents) by the Michigan State Tax Commission. The Tax Commission action was based on petition of Detroit's Board of Assessors following adverse decision by the City's Common Council. Taxpayers claimed and the Michigan Court of Appeals held that the steel in question was immune from taxation by virtue of Article I, Sec. 10, Cl. 2 of the Constitution of the United States.

A timely application for leave to appeal filed with the Michigan Supreme Court by Petitioners was denied on March 20, 1969.

(2) Jurisdiction of this Court to deny writ of certiorari is invoked under C. 646, 62 Stat. 929 (28 U.S.C.A. 1257 (3)). This brief applies to Respondent, American Steel Corporation.

QUESTIONS PRESENTED FOR REVIEW

Respondent contends that Petitioners have failed to show sufficient grounds for the granting, by this Court, of a Writ of Certiorari, but if this Court does grant such writ, Respondent contends that the questions as phrased by Petitioners do not accurately reflect the issues before this Court and that the following should be the issues considered:

1. Did steel, made to order and specifications of Respondent by direct negotiation and agreement between Respondent and the producing company and shipped directly from the foreign producer to Detroit, in pursuance of that negotiation and agreement, retain its status as an import at the time Petitioner sought to tax it?

The Michigan Court of Appeals said "Yes."
Respondent contends the answer should be "Yes."

2. Could steel, efficiently caused to be imported by Respondent, lose its import status with resultant local tax immunity by virtue of actions consistent with the importation taking place prior to the physical act of bringing the steel into the country, and in many cases, even before the steel was produced?

The Michigan Court of Appeals said "No."
Respondent contends the answer should be "No."

CONSTITUTIONAL PROVISION INVOLVED

The pertinent constitutional and statutory provisions are set forth in the Petition.

STATEMENT

This litigation, as to this Respondent, arises from the petition of the Board of Assessors of the City of Detroit of June 29, 1966, to the State Tax Commission of Michigan to review the action of the Common Council of the City of Detroit, sitting as a Board of Review, in denying the Board of Assessors' appeal for revision of the tax assessment on American Steel Corporation, such revision sought to include the value of imported steel. American Steel Corporation had claimed immunity from local *ad valorem* taxation for certain steel imported from abroad, as to the tax year here in question from Japan and Belgium.

The State Tax Commission on February 3, 1967, reversed the decision of the Common Council of the City of Detroit, sitting as a Board of Review, and increased the assessment of Respondent American Steel for the 1966 tax year by $262,310 from $330,160 to $592,470.

It did so despite uncontroverted evidence indicating Respondent to be the efficient cause of importation of the steel in question. For a variety of other reasons not here presented for review, particularly the failure of the Tax Commission to make findings of fact, its decision, as Respondent contended in its brief to the Michigan Court of Appeals, did not conform to provisions of Michigan law.

Respondent in turn sought and obtained leave to appeal from the Michigan Court of Appeals and the Respondent's case was consolidated with various others involving a

similar question on imports, and the Michigan Court of Appeals, Division I, consisting of J. G. Kavanagh, P.J., Burns and Fitzgerald, J.J. issued an opinion on December 2, 1968 (165 N.W.2d 875) reversing the several determinations of the State Tax Commission and thus, in effect, affirming the original determination of the Common Council of the City of Detroit, and finding that the steel was entitled to immunity. The Court further found that at the time of assessment the steel was in its original package and was not being put to any purpose for which it was imported.

The Petitioners then sought leave to appeal the Court of Appeals decision to the Michigan Supreme Court. Leave was denied by the Michigan Supreme Court in an order issued March 20, 1969, on the ground that Petitioners failed to:

> "Persuade the Court that they have a meritorious basis for appeal or that the decision of the Court of Appeals was clearly erroneous."

Subsequently, on May 21, 1969, the Michigan Supreme Court denied a Motion of Stay Enforcement of its decision pending this Writ of Certiorari.

Petitioners are now seeking a Writ of Certiorari from this Court.

ARGUMENT

Respondent first notes that Petitioners have failed to meet the requirements of the Supreme Court's rules governing granting of certiorari. Petitioners, as will be shown below, have not met the various criteria set forth under rule 19 and applicable interpretative decisions. As this Court said in *Rice v. Sioux City Cemetery*, 349 U.S. 71, 74

(1955) the Supreme Court does not "sit for the benefit of particular litigants" and, further, review is most likely to be granted where a lower decision was on a substantial question not previously determined by this court or where the decision was probably not in accord with applicable precedent. Petitioners have failed to bring themselves within these, or other, criteria of the rule.

Petitioners here seek Supreme Court determination that steel, made to Respondent's order and specifications, by direct negotiation and agreement effected between Respondent and the producing companies, shipped directly from the foreign producer to Respondent in Detroit, did not retain its status as an import at the time Petitioners sought to tax it. Respondent here deals primarily with the Japanese steel it imported, since, as to other steel imported by Respondent, or otherwise sought to be taxed against Respondent, for the tax year here in question, there are additional factors which would establish immunity under questions which have not been raised before this Court.

Petitioners claim that the steel lost its status not because of actions after it was brought into the country but rather because of actions taking place before it was brought into the country, in fact, in most instances, before the steel was even produced. These actions consisted of the execution of certain documents by the producer and the American wholly owned subsidiary of a foreign trading house, (in this Japanese situation—Tokyo Boeki, U.S.A. (meaning Tokyo Traders)), due to the fact that the business customs of the foreign country prevented a direct arrangement between the producer and Respondent. In effect, Respondent, American Steel, purchased from and through the subsidiary domestic company the right to import the foreign produced steel into the United States. Without doubt, however, Toyko Boeki, was, in substance,

not a principal, it was indeed, only an instrumentality used by the Japanese producer to effectuate the importation agreed upon between that producer and Respondent.

Petitioners are, in effect, asking this Court to find either that this instant case does not come within its decision in *Hooven and Allison Co. v. Evatt,* 324 U.S. 652 (1945), on the basis of narrow factual distinctions, found by the Michigan Court of Appeals not to be material, or that *Hooven* should be set aside as precedent by this Court, all upon an argument that at best is an exaggeration of form over reality and substance.

The Michigan Court of Appeals found the *Hooven* decision applicable to the facts here, and found substantial similarities between the two cases:

> "In both instances the taxpayers placed orders with domestic corporate intermediaries for merchandise which originated in a foreign country. The price included charges for ocean freight, insurance, and customs. The goods were specifically marked when they left the foreign port to identify the product for the taxpayer, except in a few instances when the sales took place while the steel was enroute. . . ."

The court does note also:

> "In the present cases the appellants contracted with companies which extended their own credit and received all payments for their own accounts. The precise relationship between the domestic companies and the foreign mills (or brokers in some cases) does not clearly appear on the records, but it can be discerned that the domestic concerns entered into separate and distinct contracts with the foreign sellers."

The Court then goes on to note, in conformity with *Hooven:*

> "In determining who is the 'efficient cause' of importation in the constitutional sense, we must look beyond matters of form to the substance of the transaction. Perhaps the most significant matter which the Supreme Court emphasized in *Hooven, supra*, p. 661, was the fact that performance of the contract called for, and necessarily resulted in, importation of the merchandise. Appellants' contracts with the domestic intermediaries specified that the steel was to be shipped from a foreign country or was already en route directly to the appellants. Performance of these contracts then, as in *Hooven*, called for, and necessarily resulted in, importation."

This Court in *Hooven* indicated its understanding of the variety of formal methods of effectuating importation (324 U.S. at 662):

> "It is common knowledge to lawyers and businessmen that vast quantities of merchandise are annually imported into this country by purchasers resident here, for sale or manufacture here. Sometimes the buyer completes the purchase abroad, in person; and ships to this country, sometimes, as in this case, the purchase is on unsecured credit, but more often it is under contracts by which the vendor reserves in himself or his agent or a banker a lien of title as security for payment of the purchase-price on or after arrival."

The Michigan Court of Appeals opinion was clearly within the guidelines of *Hooven*, where this Court said:

> "We are concerned with matters of *substance* not of form. When the merchandise is brought from another country to this, *the extent of its immunity from state taxation turns on the essential nature of*

the transaction, considered in the light of the constitutional purpose, and *not on the formalities with which the importation is conducted or on the technical procedures by which it is effected.*" (Emphasis ours).

The Michigan Court of Appeals ruled that the essential nature of the transaction involved here was such that the steel retained its status as an import at the time of the taxation by Petitioner. This Court should let that decision stand, as did the Michigan Supreme Court.

The decision of the Michigan Court of Appeals was clearly supported by the evidence produced by Respondent at the Tax Commission hearing on November 30, 1966. The uncontradicted testimony of Mr. Fred Ginsberg, President of American Steel, established that he went to Japan because he desired to accomplish purchase and importation of certain steel and there held direct talks on behalf of Respondent with representatives of Fuji Iron and Steel Company, the producer (Tax Commission Hearing transcript p. 25). At such meeting discussions were held indicating interest on Respondent's part, discussing specifications and technical matters, and, in effect, verbally and substantially agreeing on the contract. Uncontroverted evidence was further produced by Respondent to establish that it could not actually contract with the Japanese producing firm which could not in form deal with Respondent because of Japanese custom (Hearing transcript p. 26). Thus Respondent had to place the formal order through Tokyo Boeki (U.S.A.) Inc., a wholly-owned subsidiary of Tokyo Boeki, Ltd., a Japanese trading house, which was used for this purpose (Hearing transcript p. 28).

Respondent believes that the importation of goods from abroad, like the concept of interstate and foreign com-

merce, is a practical conception, drawn from the realities of trade, and not, as Mr. Justice Holmes observed in *Rearick v. Pennsylvania*, 203 U.S. 507, 512 (1906) dependent upon the "witty diversities (Yelv. 33) of the law of sales." Nothing in *Hooven* suggests that the fact of importation hinges upon whether a selling agent obtains a commission on the transaction or whether shipping documents are in one form or another. The formalities do not affect the fact that Respondent negotiated for the steel directly in Japan with the manufacturer and received the steel directly from Japan.

Petitioner, as a further objection to the decision below, states (petition p. 9):

> "Extension of immunity to respondents results in characterizing as importers both respondents and the domestic companies with whom they contracted."

This argument ignores the mandate of the United States Constitution which is: "No State shall, without the Consent of the Congress, lay any Imposts or Duties on *Imports* . . ." (Emphasis ours). The question primarily to be decided is—Is the status of the steel such that it retains its character as an import? The question of who is the importer is subsidiary to that. In other words, at the time of claimed tax liability here, after the steel was shipped from the foreign country, had anything caused the steel to loose its import tax immunity status? Respondent contends the only plausible answer is no. It further submits that in substance it was the importer, with the domestic subsidiary, Tokyo Boeki, serving as an instrumentality of that importation.

Any contrary contention must be based upon a premise that steel, brought into the United States, lost its status as an import before it was ever brought into the United

States, in fact, in most cases, before it was ever manufactured in the foreign country. Under applicable law, the steel was an import, entitled to immunity at the time Petitioners sought to tax it.

In further straining to distinguish the facts of the instant case from those in *Hooven,* Petitioners point to the acknowledged fact that Respondent intended to resell the steel rather than use it for a manufacturing process of its own. The very meaning of *Brown v. Maryland* (1827), 12 Wheat. 419 belies this attempted distinction. The whole thrust of *Brown* is that a state may not require the importer of foreign articles to take out a license from the State before being permitted to *sell* the import (Emphasis ours). Certainly the fact that Respondent was to sell the steel instead of using it in manufacturing can not remove this case from the *Hooven* doctrine and the concept of import immunity. In accord with *Brown* is the recent decision in *Wheeling Steel Corp. v. Porterfield,* 14 Ohio St. 2d 85, 236 N.E. 2d 652 (1968).

Even more incredulous is Petitioner's effort to upset a constitutional immunity on the basis that Respondent's American customers could also claim an importation immunity. This Respondent caused the importation, not its customers, and the rationale of the decisions of the Court of Appeals and *Hooven* on their face obviate any such fearful consequence.

Petitioners also urge a restatement of the Import-Export immunity doctrine, one of the longest standing Constitutional provisions, because (petition p. 10):

> "To equate 'the efficient cause of importation' with the 'importer' under these circumstances will permit much foreign goods, even though domesticated, to be placed beyond the taxing jurisdiction of the states and their local taxing units."

Since there is nothing in the law as now understood or in its application to the present facts, to support this contention, Petitioners are really stating that the constitutional immunity is not desirable from their revenue producing point of view. This is an irrelevant argument in this tribunal. As the Michigan Court of Appeals in this case correctly stated (citing in support *Youngstown Sheet & Tube Company v. Bowers* (1959), 358 U.S. 534):

> "Subsequent to *Brown v. Maryland, supra*, it has become well established that imports lose their constitutional immunity when the importer (1) sells them or (2) 'breaks up the packages' or (3) puts them to the use for which they were imported."

Other recent cases have stressed these immunity limitations, including *Department of Revenue v. Beam Distilling Co.*, 377 U.S. 341 (1964) and *Wheeling Steel Corp. v. Porterfield, supra*. It is clear that when the steel is sold by Respondent, or otherwise is used in a manner that causes it to lose its immunity, its immunity will, in fact, end. Until then, the constitution affords the immunity and absent its change, Petitioners' arguments, however pragmatic, are without judicial cognizance.

Petitioners appear to argue that under the present law field auditors will be unable to determine who should be granted immunity. This, at best, is so specious an argument to support destruction of a constitutional immunity that we deem detailed response unnecessary. We hardly think that a constitutional immunity to taxation should be endangered because a taxing authority asserts it lacks trained personnel to evaluate that immunity. Assuredly that is not the criterion for immunity. Of course, the reality is that the particular facts, giving rise to the immunity found below, were quite readily apparent, in the administrative process, and required no more sophistica-

tion than we must assume would always be available to the administrators of *ad valorem* taxation.

CONCLUSION

Petitioners have not shown the Michigan Court of Appeals decision to be erroneous in the light of existing and constitutionally imperative law, applied to the facts presented below. They have shown no inconsistency of lower court decisions nor have they shown any constitutional necessity for reinterpretation of existing constitutional law.

Respondent under the evidence presented below, has established that the steel in question was imported after negotiation and agreement made between Respondent and the foreign producing firm and that it was shipped directly from the foreign producer to Respondent. The steel was produced only for Respondent and to its specifications. Respondent contends, and the adjudicating Court of Appeals below found, that the steel retained its immunity under the *Hooven* decision, because the distinctions claimed by Petitioners in this Court between *Hooven* and the instant case are without substance.

The Supreme Court of the State of Michigan found no fault with that Court of Appeals determination so as to accord its taxing authorities leave to appeal. Petitioners have failed to advance any reason for this Court to question the decision below.

Petitioners having failed to show that they are entitled to a Writ of Certiorari, this Respondent respectfully requests this Court to deny their petition.

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July 14, 1969

APPENDIX A

STATE OF MICHIGAN

BEFORE THE MICHIGAN STATE TAX COMMISSION

At a meeting of the Michigan State Tax Commission held on the 26th day of January, 1967 at Lansing, Michigan.

In Re Petition No. 15-343 of the Detroit Board of Assessors, City of Detroit, County of Wayne, State of Michigan, received on June 30, 1966, requesting to place upon the assessment roll property omitted therefrom, consisting of personal property in the form of steel inventory, to be assessed to American Steel Corporation, 7020 East McNichols, Detroit, Michigan.

The petitioner, the Detroit Board of Assessors, contends that personal property was erroneously omitted from the assessment rolls and the same should be placed upon the rolls in accordance with the provisions of Sec. 211.152 C. L. of Mich. 1948.

The Commission accepted the petition for examination and caused an investigation to be made to determine the assessable value of the personal property and to determine to whom the property should be assessed. A hearing was held on November 30, 1966 at Detroit, Michigan, at which hearing the taxpayer of the property in question was represented.

After consideration of the data presented at the hearing and the examination and investigation of the Commission's staff along with other written documents and exhibits of the taxpayer and the Detroit Board of Assessors the Commission finds:

1. The Detroit Board of Assessors in Petition No. 15-343 asks the current assessment of $330,160 to be raised to $592,470 because of additional value revealed in an audit by a member of the Board of Assessors staff.

2. The investigation revealed that the issue involved in this dispute is not one of valuation but is a legal issue concerning the assessability of certain imported steel inventories. The city of Detroit claims that the steel in question is in the possession of the taxpayer to be purchased under sales contract agreement and thereby has entered the channels of trade and become subject to ad valorem taxation. The taxpayer on the other hand claims that title never passed to them from the importers and as such the steel in question retains its immunity from ad valorem taxation as an "imported product" under Article I, Section 10, Chapter 2 of the United States Constitution which reads:

> "No State shall, without the consent of the Congress, lay any imports (sic) or duties on Imports or Exports . . ."

3. Taxable property, both real and personal in the city of Detroit are assessed at a significant range of from 41% to 56% of their true cash value, or a properly weighted mathematical average for the local unit of 45.25% which is sustained by an equalization study made by the Commission in 1963, which data has been kept routinely current by the Commission and checked in the field by the Commission's staff.

4. That where property was omitted from the assessment roll erroneously it should be placed upon the assessment roll as provided in Sec. 211.152 C. L. of Mich. 1948.

After these findings of facts and the consideration of all the information contained therein the Commission still has

reservations. On the basis of the documents, exhibits, etc., there are doubts as to whether or not the goods in question are "imports" under Article I, Section 10, Chapter 2 of the United States Constitution. Taxation is the rule and there is a presumption that property is taxable unless it clearly appears that constitutional provisions or statutes grant an immunity from taxation. The burden of proof to establish immunity from ad valorem taxation rests on the taxpayer. The Commission is of the opinion that the taxpayer has failed to prove its claim of immunity from taxation based on the theory of imported goods. Therefore, the petition of the Board of Assessors of the city of Detroit is granted with reservation as to the final assessed valuation. This reservation is based upon the utilization of the correct assessment ratio to apply to true cash value in order to achieve the correct assessed valuation. It is determined in the opinion of the Commission that the undisputed true cash value of the property involved is $1,184,930 and the assessment level is 45.25% of true cash value. Therefore, appellant's assessment should be $536,200. Since the proposed assessment per Petition No. 15-343 is $592,470 it is clearly apparent that the proposed assessment is significantly above and is not in accordance to the true cash value reduced to the local assessment level and the true cash value of all other real and personal property within the city of Detroit, reduced to such assessment level. The Commission fully appreciates the fact that the question presented in the petition is of a legal nature. We readily acknowledge that the courts are best adapted to resolving the legal questions involved just as the Commission believes itself to be the most proficient in questions of valuation. Should the taxpayer be dissatisfied and seek further relief available under the law, the Commission directs his attention to Sec. 211.53 of the C. L. of Mich. 1948, or in an action for a declaration of rights.

WHEREFORE, it is hereby ordered that the amount of $536,200 be placed upon the assessment roll as the true and lawful value of such property.

Robert L. Purnell, Chairman

R. Gerald Barr, Commissioner

Ward G. Dexel, Commissioner

February 3, 1967

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 280

Supreme Court, U.S.
FILED
JUL 19 1969
JOHN F. DAVIS, CLERK

CITY OF DETROIT, a municipal corporation,
BOARD OF ASSESSORS OF THE CITY OF DETROIT,
Petitioners-Plaintiffs,
MICHIGAN STATE TAX COMMISSION,
Appellant,
v.
AMBASSADOR STEEL COMPANY,
a Michigan corporation,
ADVANCE STEEL COMPANY,
a Michigan corporation,
AMERICAN STEEL CORPORATION,
a Michigan corporation,
BARSTEEL CORPORATION,
a Michigan corporation,
CONTRACTORS STEEL COMPANY,
a Michigan corporation,
CRAFT STEEL & SUPPLY COMPANY, INC.,
a Michigan corporation,
EWALD STEEL COMPANY,
a Michigan corporation,
KASLE STEEL CORPORATION,
a Michigan corporation,
KENWAL PRODUCTS CORPORATION,
a Michigan corporation,
PARAGON STEEL CORPORATION,
a Michigan corporation,
TITAN STEEL COMPANY,
a Michigan corporation,
Respondents.

BRIEF FOR RESPONDENT, ADVANCE STEEL COMPANY, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS, DIVISION 1, AND APPENDIX

(For List of Attorneys, see Inside Front Cover.)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 280

CITY OF DETROIT, a municipal corporation,
BOARD OF ASSESSORS OF THE CITY OF DETROIT,
Petitioners-Plaintiffs,
MICHIGAN STATE TAX COMMISSION,
Appellant,
v.
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a Michigan corporation,
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PARAGON STEEL CORPORATION,
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TITAN STEEL COMPANY,
a Michigan corporation,
Respondents.

BRIEF FOR RESPONDENT, ADVANCE STEEL COMPANY, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS, DIVISION 1, AND APPENDIX

TO: The Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Respondent, Advance Steel Company, respectfully opposes the granting of a writ of certiorari to review the Judgment of the Michigan Court of Appeals, Division 1, entered on December 2, 1968.

INTRODUCTION

Respondent-Appellee appealed from the Michigan State Tax Commission on its individual record as did all the other Respondents named in the Petition. References to the Record on Appeal in this brief are to the record of Respondent, Advance Steel Company only.

A. OPINIONS BELOW

Respondent-Appellee submits, in addition to the opinions set forth in the brief, the Opinion of the Michigan State Tax Commission as to this Respondent in Appendix A and the Opinion of the Michigan Supreme Court in Appendix B.

B. JURISDICTION

Respondent-Appellee denies the statements in the Petition with respect to jurisdiction and states that this Court is without jurisdiction to issue a writ of certiorari because the Petition has failed to comply with the time requirements of 28 U.S.C. 2101 (c) and Rule 22 of the Rules of the Supreme Court.

C. QUESTIONS PRESENTED FOR REVIEW

The following questions are presented for review:

1. Has the steel in question retained the indicia of importation at all times so as to retain immunity while in the hands of Respondent-Appellee?

2. Has the Michigan Court of Appeals, Division I interpreted and applied the provisions of Article I Section 10 Clause 2 of the United States Constitution to the facts in this case consistent with the decisions of the United States Supreme Court?

D. CONSTITUTIONAL PROVISIONS INVOLVED

The provision of the United States Constitution directly involved is adequately set forth in the Petition.

E. COUNTER-STATEMENT OF THE CASE

Respondent-Appellee is a Michigan Corporation with principal offices in the City of Detroit. It is in the business of steel warehousing which is primarily the importation of foreign produced steel into Detroit where said steel is held for re-sale by Respondent-Appellee to domestic users.

In the ordinary course of business, Respondent submits inquiries to foreign steel mills for price and availability for future delivery to it in Detroit. The inquiries are generally through brokers or agents who act either as agent for Respondent or as agent for a foreign mill. When price and availability are determined, Respondent submits detailed specifications via the agent referred to above. In

the usual course of these transactions the steel is not in existence at the time the order is placed. By way of example, steel is often ordered in November and December for shipment the following year in accord with the opening and closing of navigation on the Great Lakes (Record on Appeal, Item 4, taxpayer's "Exhibit A").

The agent who may be acting either for Respondent or a mill (usually with offices located in New York City) receives the specications from Respondent and transmits them to the mill. The agent arranges for shipment to the port of Detroit by ship, customs entry and arranges the method of payment to the mill. The price paid by Respondent is a landed price including the price of steel, customs, insurance, freight and fees to the agent. When the steel is produced in the foreign country of origin, it is given distinctive markings at the foreign mill to identify it as Respondent's order. The markings may be either contract numbers, purchase order numbers, or the name ADVANCE. Regardless of the type marking, it is easily and readily identified in the trade as the steel produced to the order of Respondent (Record on Appeal, Item 4, taxpayer's "Exhibit A"). The steel is then delivered by the mill to a port for shipment to Detroit. When the steel is loaded aboard ship it becomes the property of Respondent and Respondent is responsible for all risks and payment at that point.

The steel is landed at the port of Detroit in its original bundles with original markings and held by Respondent for resale. Respondent does not engage in processing or manufacturing nor does it claim immunity for "broken bundles" or steel purchased on the high seas.

Respondent filed its 1966 Personal Property Tax Return on February 20, 1966, reflecting taxable personal property

in the amount of $412,100.00. The Board of Review for the City of Detroit upheld the immunity on taxpayer's imported steel and caused the assessment rolls for the City of Detroit to reflect taxable personal property of a value of $412,100.00.

Appellant was notified by the Michigan State Tax Commission that the assessors had complained to the Commission that the personalty was improperly assessed and that the assessors requested an adjustment from $412,100.00 to $606,080.00 (Record on Appeal, Item 2).

The Petition is substantially correct with respect to proceedings before the Michigan State Tax Commission and the Michigan Court of Appeals, Division 1.

ARGUMENT I

Respondent-Appellee relies on the express language of Article I, Section 10, Clause 2 of the United States Constitution. The landmark decision of *Brown v. Maryland*, 12 Wheat 419; 6 L.ed. 678 set forth the first comprehensive judicial statement of what an import is for purposes of immunity, when speaking through Chief Justice Marshall the Court stated:

> "While remaining the property of the importer, in the original form or package in which it was imported, a tax upon it is too plainly a duty on import to escape the prohibition in the Constitution."

There is no question with regard to the fact that the steel is imported or that it is held for re-sale in its original form and package. Respondent-Appellee claims no immunity for steel in "broken bundles" or steel purchased on the high seas.

The thrust of the Petition is twofold. First, that having illegally assessed imported merchandise the City of Detroit is embarrassed by the prospect of having to repay the wronged taxpayer for taxes paid under protest and secondly, that despite the plain meaning of the Constitution, the Petitioner seeks to have the Court somehow focus on obscure mechanics of trade rather than the substance of the transaction.

The first matter deserves no answer.

The second proposition has already been considered and answered by this Court in *Hooven and Allison Co. v. Evatt*, 324 U.S. 652; 89 L.ed. 1252:

> ". . . Petitioner's contracts of purchase are the inducing and efficient cause of bringing the merchandise into the country which is importation. Examination of the documents and consideration of the course of business can leave no doubt that the petitioner not only causes the importation . . . but that the purpose and necessary consequence of it are to supply petitioner . . ."
>
> "For in determining the meaning and application of the constitutional provisions, we are concerned with matters of substance not of form. When the merchandise is brought from another country to this, the extent of its immunity from state taxation turns on the essential nature of the transaction considered in the light of the constitutional purpose, and not on the formalities with which the importation is conducted or the technical procedures by which it is effected . . ."
>
> ". . . It is evident that the constitutional prohibition envisages the present transaction quite as much as if the petitioner had sent his own agent abroad where he had purchased and paid for the merchandise and shipped it to petitioner in this country. The purpose and the result of the transaction are the same in either case. . . ."

In the case of *Youngstown Sheet & Tube Co. v. Bowers,* 358 U.S. 534; 3 L.ed. 2d 490 (1958) the Court, carefully distinguishes that situation from *Brown v. Maryland* and *Hooven & Allison v. Evatt,* pointing out and approving recognition of immunity when imported goods are merely held in a warehouse in their original form and package for resale as opposed to the situation where they are so commingled with the common mass of property as to be indistinguishable.

In the case of *Department of Revenue v. James B. Beam,* 377 U.S. 341; 12 L.ed. 2d 362 in dealing with a Kentucky tax on scotch whiskey imported in barrels for resale, where the tax was collected while the whiskey remained in unbroken packages in the hands of the importer and prior to resale or use by the importer, this Court stated:

> "The tax here in question is clearly of a kind prohibited by the Export-Import Clause. *Brown v. Maryland,* 12 Wheat. 418, 6 L.Ed. 678. As this Court stated almost a century ago in *Low v. Austin,* 13 Wall. 29, 20 L.Ed. 517, a case involving a California *ad valorem* tax on wine imported from France and stored in original cases in a San Francisco warehouse, 'the goods imported do not lose their character as imports, * * * until they have passed from the control of the importer or been broken up by him from their original cases. Whilst retaining their character as imports, a tax upon them, in any shape, is within the constitutional prohibition.' Id. at 34. See *Hooven & Allison Co. v. Evatt,* 324 U.S. 652, 65 S. Ct. 870, 89 L.Ed. 1252."

ARGUMENT II

This case has been the subject of intense scrutiny, both administrative and judicial. The Michigan Personal Property Tax laws, Compiled Laws of Michigan 1948, Section 211.29 provides for a Board of Review as does Title VI, Chapter II, Section 5, Charter of the City of Detroit, 1918 (1963 Ed.) as set forth in Appendix C. Simply put, the Board of Review, in this case, the Common Council for the City of Detroit, sitting as a committee of the whole, upon timely application, reviews tax assessments for determination as to legality and/or amount.

Respondent-Appellee on March 21, 1966, was upheld by this Board of Review for the City of Detroit in its contention that the steel claimed immune was not subject to taxation. Thereafter, the assessors appealed to the State Tax Commission which, despite stated "reservations" in its opinion ruled no immunity and directed the Respondent to seek a judicial determination. On the facts as set forth in the Counter-Statement of Facts, the Michigan Court of Appeals Division I, found that Article I Section 10 Clause 2 of the United States Constitution did in fact apply to this situation and every case set forth in the Petition was considered in connection with the Review. The Michigan Supreme Court denied Leave to Appeal in a simple one paragraph Opinion set forth in Appendix B.

While it would be presumptuous to presume to measure the court's discretion, it is true nevertheless that the questions involved have heretofore been determined by this Court, and the decision is in accord with the applicable decisions of this Court. The decision in question is neither in conflict with those of other courts of appeal nor has it so far departed from the accepted and usual course of

judicial proceedings as to call for an exercise of this Court's power of supervision.

RELIEF REQUESTED

WHEREFORE, Respondent-Appellee, Advance Steel Company, respectfully requests that the Petition for Certiorari be denied.

Respectfully submitted,

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Dated: July 18, 1969

APPENDIX A

STATE OF MICHIGAN

BEFORE THE MICHIGAN STATE TAX COMMISSION

At a meeting of the Michigan State Tar Commission held on the 26th day of January, 1967 at Lansing, Michigan.

In Re Petition No. 16-2831 of the Detroit Board of Assessors, City of Detroit, County of Wayne, State of Michigan, received on June 30, 1966, requesting to place upon the assessment roll property omitted therefrom, consisting of personal property in the form of steel inventory, belonging to Kenwall Products Corporation, 9301 Central, Detroit, Michigan.

The petitioner, the Detroit Board of Assessors, contends that personal property was erroneously omitted from the assessment rolls and the same should be placed upon the rolls in accordance with the provisions of Sec. 211.152 C. L. of Mich. 1948.

The Commission accepted the petition for examination and caused an investigation to be made to determine the assessable value of the personal property and to determine to whom the property should be assessed. A hearing was held on November 22, 1966 at Detroit, Michigan, at which hearing the taxpayer of the property in question was represented by counsel.

After consideration of the data presented at the hearing and the examination and investigation of the Commission's staff along with other written documents and exhibits of the taxpayer and the Detroit Board of Assessors the Commission finds:

1. The Detroit Board of Assessors in Petition No. 16-2831 asks the current assessment of $355,530 to be raised to $645,090 because of additional value revealed in an audit by a member of the Board of Assessors staff.

2. The investigation revealed that the issue involved in this dispute is not one of valuation but is a legal issue concerning the assessability of certain imported steel inventories. The city of Detroit claims that the steel in question has been purchased by the taxpayer from an importer and thereby has entered the channels of trade and become subject to ad valorem taxation. The taxpayer on the other hand claims that they are the "importers" and as such the steel in question retains its immunity from ad valorem taxation as an "imported product" under Article I, Section 10, Chapter 2 of the United States Constitution which reads:

> "No State shall, without the consent of the Congress, lay any imports (sic) or duties on Imports or Exports . . ."

3. Taxable property, both real and personal in the city of Detroit are assessed at a significant range of from 41% to 56% of their true cash value, or a properly weighted mathematical average for the local unit of 45.25% which is sustained by an equalization study made by the Commission in 1963, which data has been kept routinely current by the Commission and checked in the field by the Commission's staff.

4. That where property was omitted from the assessment roll erroneously it should be placed upon the assessment roll as provided in Sec. 211.152 C. L. of Mich. 1948.

After these findings of facts and the consideration of all the information contained therein the Commission still has

reservations. On the basis of the documents, exhibits, etc., there are doubts as to whether or not the goods in question are "imports" under Article I, Section 10, Chapter 2 of the United States Constitution. Taxation is the rule and there is a presumption that property is taxable unless it clearly appears that constitutional provisions or statutes grant an immunity from taxation. The burden of proof to establish immunity from ad valorem taxation rests on the taxpayer. The Commission is of the opinion that the taxpayer has failed to prove its claim of immunity from taxation based on the theory of imported goods. Therefore, the petition of the Board of Assessors of the city of Detroit is granted with reservation as to the final assessed valuation. This reservation is based upon the utilization of the correct assessment ratio to apply to true cash value in order to achieve the correct assessed valuation. It is determined in the opinion of the Commission that the undisputed true cash value of the property involved is $1,290,180 and the assessment level is 45.25% of true cash value. Therefore, appellant's assessment should be $583,800. Since the proposed assessment per Petition No. 16-2831 is $645,090 it is clearly apparent that the proposed assessment is significantly above and is not in accordance to the true cash value reduced to the local assessment level and the true cash value of all other real and personal property within the city of Detroit, reduced to such assessment level. The Commission fully appreciates the fact that the question presented in the petition is of a legal nature. We readily acknowledge that the courts are best adapted to resolving the legal questions involved just as the Commission believes itself to be the most proficient in questions of valuation. Should the taxpayer be dissatisfied and seek further relief available under the law, the Commission directs his attention to Sec. 211.53 of the C. L. of Mich. 1948, or in an action for a declaration of rights.

WHEREFORE, it is hereby ordered that the amount of $583,800 be placed upon the assessment roll as the true and lawful value of such property.

Robert L. Purnell, Chairman

R. Gerald Barr, Commissioner

Ward G. Dexel, Commissioner

I hereby certify that this is a true copy of the order of the State Tax Commission on file in the State Tax Commission office as provided by Act 147, P.A. 1960.

Edward W. Kane,
Secretary.

February 1, 1967

APPENDIX B

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 20th day of March in the year of our Lord one thousand nine hundred and sixty-nine.

Present the Honorable Thomas E. Brennan, Chief Justice, John R. Dethmers, Harry F. Kelly, Eugene F. Black, Thomas M. Kavanagh, Paul L. Adams, Thomas G. Kavanagh, Associate Justices.

On order of the Court (T. G. Kavanagh, J., not participating), the application for leave to appeal is considered, and the same is hereby denied, as plaintiffs and appellants have failed to persuade the Court that they have a meritorious basis for appeal or that the decision of the Court of Appeals was clearly erroneous. Plaintiffs' and appellants' request for a stay of proceedings is denied, as thereby being moot.

State of Michigan—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 20th day of March in the year of our Lord one thousand nine hundred and sixty-nine.

(Seal)

Harold Hoag,
Deputy Clerk.

APPENDIX C

Section 5, Chapter II, Title VI, Charter of the City of Detroit, 1918 (1963 Ed.)

Sec. 21-7-4. Appeals to common council from action of board of assessors; hearing by council.

The common council, after receiving such assessment rolls, shall, at 10:00 A.M. on the Tuesday next following the first Monday in March, 1962, and the same each year thereafter, proceed to consider the same. Any person who has previously complained to the board of assessors as provided in section 21-7-2, considering himself aggrieved by the assessment of his property and the decision of the board of assessors with respect to the grounds specified by the complainant thereon, may appeal to the common council in person or by his legal representative. Such appeal shall be in writing and shall state, specifically, the grounds previously presented to the board of assessors and the matter complained of together with the address of the complainant. No other matter in connection therewith shall be considered by the council.

Such appeal shall be filed on or before the Tuesday following the first Monday in March and may not be filed thereafter. The common council may refer such assessment rolls and appeals to a committee of the council for consideration. The committee shall give notice to any person who has filed an appeal, as above provided, of the time and place of the meeting for the hearing thereof, which notice may be made in writing, by delivering the same to such person or leaving the same at his place of residence or place of business with some person of proper age and discretion, or by mail to the address of such complainant. While acting upon such assessment rolls or appeals, any

member or employee of the board of assessors may, and on request of the council or such committee by resolution, shall, meet with the council or such committee and make such explanations as he may deem requisite in any case. (C. O. 1954, ch. 81, §3; Ord. No. 598-F, §1.)

The common council or committee thereof shall hear and determine all appeals in a summary manner and correct any errors which they may discover in the assessment rolls, shall place thereon the names of any persons and the descriptions of any property not already assessed and assess the same and may increase or diminish any assessment as they see fit; provided, that the council or such committee shall not increase any assessment without giving a reasonable opportunity to persons owning or having charge of the same, if known, to appear and object thereto. The consideration of the assessment rolls and hearing of appeals may be continued from session to session for a period not less than five days or exceeding sixteen days after the date of their delivery to the council. The committee shall make a report to the common council in the premises and the council may adopt, change or amend the same, in whole or in part.

After due consideration thereof, such rolls shall, on or before the first Monday in April, be fully and finally confirmed by the common council, and shall remain as the basis, according to property valuation, of all taxes to be levied and collected in the city until another assessment shall have been made and confirmed as provided in this division. In the event that any date set forth in this division falls on a Sunday or legal holiday, such time shall be extended to the next succeeding business day. (C. O. 1954, ch. 81, §4; Ord. No. 244-G, §1; Ord. No. 246-G, §1; Ord. No. 290-G, §1.)

Compiled Laws of Michigan 1948 Section 211.29, Michigan Statutes Annotated Section 7.29

§7.29 Meeting of board, time, place; proceedings; changing assessment roll, approval; notice of meeting; notice of change in assessment roll.] Sec. 29. On the Tuesday next following the first Monday in March, the board of review of each township shall meet at the office of the supervisor, at which time the supervisor shall submit to said board the assessment roll for the current year, as prepared by him, and the board shall proceed to examine and review the same, and during that day, and the day following, if necessary, said board, of its own motion, or on sufficient cause being shown by any person, shall add to said roll the names of persons, the value of personal property, and the description and value of real property liable to assessment in said township omitted from such assessment roll; they shall correct all errors in the names of persons, in the descriptions of property upon such roll, and in the assessment and valuation of property thereon, and they shall cause to be done whatever else may be necessary to make said roll comply with the provisions of this act. The roll shall be reviewed according to the facts existing on the tax day. The board shall not add to the roll any property not subject to taxation on the tax day nor shall it remove from the roll any property subject to taxation on said day regardless of any change in the taxable status of such property since such day. The board shall pass upon each valuation and each interest, and shall enter the valuation of each, as fixed by it, in a separate column. The roll as prepared by the supervisor shall stand as approved and adopted as the act of the board of review, except as changed by a vote as herein provided. If for any cause a quorum does not assemble during the days above mentioned, the roll as prepared by the supervisor

shall stand as if approved by the board of review. [Notice of the date, time and place of the meeting of the board of review shall be given at least 1 week prior to such meeting by publication in a generally circulated newspaper serving the area. Such notice shall appear in 3 successive issues of the newspaper where available; otherwise, by the posting of such notice in 5 conspicuous places in the township.

Whenever the board of review makes a change in the assessment of property or adds property to the assessment roll, the person chargeable with such assessment shall be promptly notified in such a manner as will assure him opportunity to attend the second meeting of the board of review provided in section 30 of this act.]

Office-Supreme Court, U.S.
FILED
JUL 22 1969
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 280

CITY OF DETROIT, a municipal corporation,
BOARD OF ASSESSORS OF THE CITY OF DETROIT,
Petitioners-Plaintiffs,
MICHIGAN STATE TAX COMMISSION,
Appellant,
v.
AMBASSADOR STEEL COMPANY,
a Michigan corporation,
ADVANCE STEEL COMPANY,
a Michigan corporation,
AMERICAN STEEL CORPORATION,
a Michigan corporation,
BARSTEEL CORPORATION,
a Michigan corporation,
CONTRACTORS STEEL COMPANY,
a Michigan corporation,
CRAFT STEEL & SUPPLY COMPANY, INC.,
a Michigan corporation,
EWALD STEEL COMPANY,
a Michigan corporation,
KASLE STEEL CORPORATION,
a Michigan corporation,
KENWAL PRODUCTS CORPORATION,
a Michigan corporation,
PARAGON STEEL CORPORATION,
a Michigan corporation,
TITAN STEEL COMPANY,
a Michigan corporation,
Respondents.

BRIEF OF RESPONDENT CONTRACTORS STEEL COMPANY IN OPPOSITION TO GRANTING OF THE PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS, DIVISION 1, AND APPENDIX

(For Attorneys, See Inside Front Cover)

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BRIEF OF RESPONDENT CONTRACTORS STEEL COMPANY IN OPPOSITION TO GRANTING OF THE PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS, DIVISION 1, AND APPENDIX

To: The Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Respondent, Contractors Steel Company, respectfully opposes the granting of a Writ of Certiorari to review the judgment of the Michigan Court of Appeals, Division 1, entered in the above-entitled consolidated cases on December 2, 1968.

I. OPINIONS BELOW

The opinion of the Michigan Court of Appeals (Appendix A, *infra*), an appellate court of said State appears in 165 N.W. 2d 875 (1968).

The Opinion of the Michigan State Tax Commission dated January 26, 1967 is unreported and is hereto attached as Appendix B, *infra*.

Denial of Application for timely Leave to Appeal to the Michigan Supreme Court was issued March 20, 1969, as indicated in 165 N.W. 2d 875 (1968) and is marked Appendix C and is hereto attached.

Order of the Michigan Supreme Court on May 21, 1969 denying the Motion of the City of Detroit and the Board of Assessors of the City of Detroit to stay enforcement of an Order of this Court pending Petition for Certiorari to the Supreme Court of the United States is unreported and is presented in Appendix D attached hereto.

II. JURISDICTION

(1) Involved herein are appeals from the Michigan Court of Appeals which vacated certain assessments placed on Detroit's 1966 personal property rolls by the Michigan State Tax Commission against taxpayers. The Michigan Court of Appeals held the taxpayers (respondents herein) were entitled to immunity from taxation thereof by virtue of Article I, Sec. 10, Cl. 2 of the Constitution of the United States. (See Appendix A, *infra*).

A timely application for leave to appeal filed with the Michigan Supreme Court by petitioners was denied March 20, 1969. (See Appendix C, *infra*).

(2) Jurisdiction of this Court to deny writ of certiorari is invoked under C. 646, 62 Stat. 929 (28 U.S.C.A. 1257 (3)).

(3) Under 28 U.S.C. §2101 (c) the last date for the plaintiff-petitioner to file its petition in this Court was June 20, 1969.

The notice served on this respondent shows on its face that the petition for certiorari was filed late, to-wit, June 25, 1969.

This Brief is submitted in behalf of Contractors Steel Company, one of the respondent taxpayers.

III. QUESTIONS PRESENTED FOR REVIEW

(1) Should certiorari be granted in the instant case if the Federal Law is settled?

The Michigan Supreme Court said NO
The respondent defendants say NO.

(2) Should certiorari be granted in the instant case when the Michigan Supreme Court has stated that the petitioner-plaintiffs have no meritorious basis for their appeal?

The respondent-defendants say NO.

(3) Should certiorari be granted in the instant case when the Michigan Supreme Court has stated there is no clearly erroneous application of the settled law to the facts?

The respondent-defendant says NO.

(4) Is steel which the respondent-defendant caused to be imported into the United States entitled to immunity from City of Detroit personal property taxation under the import-export clause of the United States Constitution?

The Michigan Court of Appeals said YES.
The Michigan Supreme Court said YES.
Respondent-defendant says YES.

5) Should certiorari be granted in the instant case when the plaintiff-petitioner filed its petition in this Court more than 90 days after the final ruling of the Michigan Supreme Court, all in violation of 28 U.S.C. §2101(c)?

Respondent-defendant says NO.

IV. CONSTITUTIONAL PROVISION INVOLVED

The provision of Article I, Section 8, Cl. 1 of the United States Constitution reads as follows:

> "The Congress shall have power to lay and collect taxes, duties, imposts and excises . . .; but all duties, imposts and excises shall be uniform throughout the United Stats."

The provisions of Article I, Section 10, Cl. 2 of the United States Constitution reads as follows:

> "No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress."

V. STATEMENT OF FACTS IN THE CASE

Contractors Steel Company, a Michigan corporation, sometimes hereinafter referred to as the taxpayer, filed properly and timely a personal property tax return for the year 1966 with the City of Detroit. The said tax return claimed as exempt from personal property taxation certain imported steel in the original bundles, pursuant to the provisions of the Federal Constitution. The only issue originally involved between the City of Detroit Board of Assessors and the taxpayer was whether the taxpayer was entitled to the exemption claimed.

The Detroit Common Council sitting as a Board of Review ruled that the steel was exempt from taxation. The Board of Assessors took an appeal to the Michigan State Tax Commission. The Michigan State Tax Commission, whose opinion is annexed hereto as Appendix B stated that it was not truly competent to rule on the matter and suggested that the taxpayers, whose cases had been consolidated, seek a determination in a regular Court. After stating its position in very generalized terms and without any citation of facts in the underlying documents, all of which were introduced in evidence, the Michigan State Tax Commission ruled that the steel in question was not immune from personal property taxation.

At the hearing before the Michigan State Tax Commission the Assessors did admit that title to the steel in question was in the taxpayer before the steel arrived in the United States. Nonetheless, the Assessors claimed that the taxpayer was not the importer entitled to the immunity under the Federal Constitution. Other than generalized statements by the witnesses for the Assessors, no basis was ever given in testimony or otherwise as to why the Assessors felt the steel in question was not entitled to the immunity.

After receiving the opinion of the Michigan State Tax Commission, the taxpayer appealed to the Michigan Court of Appeals which is an intermediate Court. Briefs were submitted to the Michigan Court of Appeals and oral arguments were had. The Michigan Court of Appeals did thereupon render its decision, which is annexed hereto as Appendix A. The Michigan Court of Appeals reversed the Michigan State Tax Commission and reinstated the immunity originally granted by the Detroit Common Council. The Michigan Court of Appeals ruled that the

taxpayer was the efficient cause of the importation, that the steel was in the original packages and that the immunity should be granted to the taxpayer.

Th Board of Assessors did thereupon apply to the Michigan Supreme Court for leave to appeal. The application for leave to appeal was "DENIED, as plaintiffs and appellantshave failed to persuade the Court that they have a meritorious basis for appeal or that the decision of the Court of Appeals was clearly erroneous."

The Board of Assessors of the City of Detroit did thereupon petition this Court for writ of certiorari. In making its petition to this Court, the Board of Assessors of the City of Detroit did change the order of the names of the respondents for reasons best known to it, but failed to send a certified transcript of the record to the United States Supreme Court in accordance with its Court Rules. Subsequently, the Board of Assessors filed a supplemental petition, seeking to correct or remedy its oversight.

This Brief of Contractors Steel Company, a Michigan corporation, is submitted in opposition to the granting of the petition for writ of certiorari.

VI. ARGUMENT

The law in the instant case is settled. *Brown v. Maryland*, 12 Wheat 419 (1827); *Hooven and Allison Company v. Evatt* (1945), 324 U. S. 652, 65 S. Ct. 876.

The documentation supporting the position of the taxpayer is in the record which was or should have been submitted to this Court. Based upon the documentation, the Michigan Court of Appeals held that this taxpayer was entitled to the immunity and that the tax should no have been levied upon Construction Steel Company.

The Michigan Supreme Court concurred in the finding of the Court of Appeals and denied the Assessors' application for leave to appeal to it. The Court held that the Assessors had no meritorious basis for its appeal and that there was no clearly erroneous application of the law to the facts in the instant case.

The taxpayer feels that since the Federal Law is settled and there is no erroneous application of law to facts, this Court should refuse a writ of certiorari in the instant case. *A fortiori*, where the Assessors failed to comply with the Court Rules of this Court.

Although the respondent taxpayer does not believe that an argument on the merits is called for at this juncture, it is pertinent to note the following facts:

(a) Title to the steel in question was in the taxpayer while the steel was still in Europe.

(b) The insurance documents insuring the shipment against loss or domage in transit from Europe to Detroit were endorsed to the taxpayer.

(c) In the event of a loss or damage, the taxpayer was obligated to pay for the steel and process its own claim under the insurance policy.

(d) That the taxpayer paid for the steel after arrival of the steel in Detroit and sometimes 30, 60 or 90 days after the arrival of the steel in Detroit on an open account basis.

(e) That from the time of the arrival of the steel in Detroit, the steel was always in the physical possession and custody of the taxpayer and kept in the original bundles.

(f) That the taxpayer does no processing of steel and did not use the steel for its own purposes.

(g) That when the taxpayer ordered the steel originally, three to five months prior to manufacture, a number was assigned to that order, which number subsequently appeared on all later documents, including but not limited to the following:

(i) The confirmation, including the terms as set forth on the reverse side thereof.

(ii) The bill of lading

(iii) The shipping documents

(iv) The notices and dates of shipment

(v) The invoices

This number was not used to identify any other steel fabricated at that foreign mill.

(h) The European mill which filled the order placed a tag on each bundle of steel shipped in accordance with the said order, which tag also contained the exact same reference number referred to in paragraph (g) so as to identify the steel with the order. Samples of the said tags were submitted at the hearing.

(i) The tagged steel which was delivered at the port of Detroit directly from the foreign point of shipment was identical with the steel ordered previously by the taxpayer.

Based upon the above facts, the Michigan Court of Appeals ruled that the taxpayer was in fact the importer or the efficient cause of the importation and was, therefore, entitled to the immunity granted by the United States Constitution. This Court has ruled and settled the law in this area on numerous occasions, two of the most important cases being *Brown v. Maryland,* 12 Wheat 419 (1827)

and *Hooven and Allison Company v. Evatt*, 324 U.S. 652, 65 S. Ct. 876, (1945).

The levying of a personal property tax on this steel, which everyone admits is imported steel in the original packages, violates the provisions of the Federal Constitution. It is crystal clear that the taxpayer in this instance was in fact the importer and all of the documents in the file support this position.

The conclusion is inescapable that the Board of Assessors was simply trying to get further revenues for the City of Detroit without any regard to the law. If the Michigan Court of Appeals and the Michigan Supreme Court had not sustained in this matter, commerce in the United States could well be brought to a standstill by the multiplication of local taxes on importation in clear violation of the Constitutional intent. Sections 8 and 10 of Article I of the United States Constitution are quite clear. Section 10 states:

> "No state shall . . . lay an impost or duty on imports and exports . . ."

Section 8 further gives Congress the exclusive power to regulate such commerce with foreign nations. In *Brown v. Maryland, supra*, the Court said at page 414:

> "While remaining the property of the importer, in his warehouse, in the original form or package in which it is imported, the tax upon it is too plainly a duty on import to escape the prohibition of the Constitution."

The Court further went on to say at page 448:

> "Any penalty inflicted on the importer for selling the article in his character of importer, must be in opposition to the Act of Congress which authorizes importation."

In *Hooven and Allison Company, supra,* this Court reaffirmed *Brown v. Maryland* and said:

> ". . . This Court has held, without a dissenting voice, that things imported are imports and entitled to immunity conferred by the Constitution; that the immunity survives their arrival in this country and continues until they are sold, removed from the original package, or put to the use for which they were imported."

In *Hooven and Allison* the following facts which are identical to the facts in the case at bar were established:

1. The taxpayer orders the merchandise
2. The merchandise has distinctive markings on it referrable to the taxpayer's contract of purchase
3. Notices are sent and ultimately the merchandise clears the customs and arrives at the taxpayer's warehouse.
4. When the broker is acting, he is acting as an accommodation to the taxpayer
5. The merchandise involved belonged to the taxpayer

Based upon the above, this Court said at page 661 in *Hooven and Allison:*

> "Petitioner's contracts of purchase are the inducing and efficient cause of bringing the merchandise into the country, *which is importation.*" (Emphasis supplied)

At page 661, the Court went further on to say:

> "From the moment of shipment, the taxed merchandise was identified and appropriated to the purchase contract and to that ultimate purpose, by

> both seller and the buyer. (Taxpayer) could resell the merchandise while it was in transit. The risk of loss from change of market value was on the (taxpayer), save as it might insure against such loss at its own expense. The right to demand, receive and use the merchandise, subject only to payment of the contract 'landed price' was in (taxpayer) and obviously if the possibility of the seller's right of stoppage *in transitu*, the carrier's lien or the necessity of payment of customs duties are to be regarded as inconsistent with importation, there could be few importations or few importers in the Constitutional sense. For there are few who are not subject to some or all of these contingencies."

In view of the fact that Contractors Steel, in the case at bar, actually owned the steel before it arrived in the United States, its position is even stronger.

At page 662 in the *Hooven and Allison* case, this Court said:

> "For the purpose of determining whether petitioner was the importer in the Constitutional sense, it is immaterial whether the title to the merchandise imported vested in him who caused it to be brought to this country at the time of shipment, or only after its arrival here."

On page 663, the Court said:

> "In determining the meaning and application of the constitutional provision, we are concerned with matters of substance not of form. When the merchandise is brought from another country to this, the extent of its immunity from state taxation turns on the essential nature of the transaction, considered in the light of the constitutional purpose, and not on the formalities with which the importation is conducted or on the technical procedures by which it is effected. It is common knowledge to lawyers

> and business men that vast quantities of merchandise are annually imported into this country by purchasers resident here for sale or manufacture here. Sometimes the buyer completes the purchase abroad, in person, and ships to this country; sometimes, as in this case, the purchase is on unsecured credit, but more often it is under contract by which the vendor reserves in himself or his agent or a banker a lien or title as security for payment of the purchase price on or after arrival. To say that the purchaser is any the less an importer in the one sense than in the other, is to ignore the Constitutional purpose and substitute form for substance."

It is crystal clear, both in form and in substance, that Contractors Steel Company, the taxpayer herein, is the importer and is the efficient cause of the importation and is entitled to the Constitutional immunity for the steel imported. The fact has been established beyond the shadow of a doubt that the importation is caused by the original order placed by Contractors Steel as above described.

VII. CONCLUSION

The Board of Assessors has failed to advance any real basis for the granting of a writ of certiorari. The Michigan Court of Appeals has fully considered all of the facts and has ruled that Contractors Steel Company is the efficient cause of the importation and/or the importer. The Federal law is settled and there has clearly been no erroneous application of the law to the facts. The Michigan Attorney General has abandoned the contest and has failed to join the Board of Assessors in requesting a writ of certiorari from this Court. The Michigan Supreme Court in denying the application for leave to appeal was correct in saying "plaintiffs and appellants have failed to persuade the Court that they have a meritorious basis for appeal or

that the decision of the Court of Appeals was clearly erroneous."

In the light of the foregoing, respondent respectfully prays that the petition for writ of certiorari filed by the Board of Assessors for the City of Detroit be denied with costs and attorney fees taxed to the respondents.

Respectfully submitted,

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APPENDIX A

DECISION OF THE COURT OF APPEALS

State of Michigan—Court of Appeals

Division 1

City of Detroit, a municipal corporation, Board of Assessors of the City of Detroit, Plaintiffs-Appellees, Michigan State Tax Commission, Appellee, v. Kenwal Products Corporation, a Michigan corporation Defendant-Appellant,	No. 3323
Kasle Steel Corporation, a Michigan Corporation,	No. 3330
Bar Steel Corporation, a Michigan Corporation, Defendant-Appellant,	No. 3331
Craft Steel & Supply Company, Inc., a Michigan Corporation, Defendant-Appellant,	No. 3333
Contractors Steel Company, a Michigan Corporation, Defendant-Appellant,	No. 3336
Titan Steel Company, a Michigan Corporation, Defendant-Appellant,	No. 3349
Ambassador Steel Company, a Michigan Corporation, Defendant-Appellant,	No. 3350
Ewald Steel Company, a Michigan Corporation, Defendant-Appellant,	No. 3351
Paragon Steel Corporation, a Michigan Corporation, Defendant-Appellant,	No. 3375
American Steel Corporation, a Michigan Corporation, Defendant-Appellant,	No. 3377
Advance Steel Company, a Michigan Corporation, Defendant-Appellant.	No. 3527

Before: T. G. Kavanagh, P.J., Burns and Fitzgerald, J.J.

Burns, J.

Eleven Detroit steel warehousing companies appeal by leave from tax commission decisions which ordered the value of certain steel to be placed on the city of Detroit personal property assessment rolls. The steel in question was shipped from foreign ports to Detroit where after clearing customs it was delivered to appellants' warehouses and stored for resale. Appellants claim that the steel was immune from property taxes because of US Const., art 1, §10, cl. 2, and cases which have interpreted that provision.

In *Brown v. Maryland* (1827), 25 US 419 (6 L ed 678), the Supreme Court invalidated a state licensing tax and held that a state could not tax imports as long as the property remained in its original form or package. *Low v. Austin* (1872), 80 US 29 (20 L ed 517), expanded the principles of *Brown v. Maryland* to prohibit states from levying *ad valorem* taxes on goods which have not lost their character as imports. See also *City of Detroit v. Lake Superior Paper Company* (1918), 202 Mich 22. Subsequent to *Brown v. Maryland, supra*, it has become well-established that imports lose their constitutional immunity when the importer (1) sells them or (2) "breaks up the packages" or (3) puts them to the use for which they were imported. *Youngstown Sheet & Tube Company v. Bowers* (1959), 358 US 534 (78 S Ct 383, 3 L ed 2d 490).

At the time of assessment in the present cases it appears that the imported steel was in its original package and that it was not being put to any use for which it was imported. The city of Detroit contends, and the tax commission held, that domestic based companies imported the steel and sold it to appellants, thereby making the steel

lose its character as an import. Appellants argue that they are the importers.

The United States Supreme Court spoke to the issue of who is an importer in *Hooven & Allison Company v. Evatt* (1945), 324 US 652, 663, 664 (65 S Ct 870, 89 L ed 1252):

> "When the merchandise is brought from another country to this, the extent of its immunity from state taxation turns on the essential nature of the transaction, considered in the light of the constitutional purpose, and not on the formalities with which the importation is conducted or on the technical procedures by which it is effected. It is common knowledge to lawyers and businessmen that vast quantities of merchandise are annually imported into this country by purchasers resident here, for sale or manufacture here. Sometimes the buyer completes the purchase abroad, in person, and ships to this country; sometimes, as in this case, the purchase is on unsecured credit; but more often it is under contracts by which the vendor reserves in himself or his agent or a banker a lien or title as security for payment of the purchase price on or after arrival. To say that the purchaser is any the less an importer in the one case than in the others, is to ignore the constitutional purpose and substitute form for substance. * * *
>
> "It is enough for present purposes that the merchandise in this case was imported; and that petitioner was the efficient cause of its importation, the purpose and effect of which was petitioner's acquisition, of the merchandise for its manufacture in finished goods. We conclude that petitioner was the importer, and that the merchandise in its hands was entitled to the consti-

tutional tax immunity, surviving delivery of the imports to it."

There are many factual similarities between the *Hooven Case, supra,* and these consolidated steel cases. In both instances the taxpayers placed orders with domestic corporate intermediaries for merchandise which originated in a foreign country. The price included charges for ocean freight, insurance, and customs. The goods were specifically marked when they left the foreign port to identify the product for the taxpayer, except in a few instances when the sales took place while the steel was en route. In *Hooven* the contract for sale between the domestic seaboard company and the Ohio manufacturer read, "for the account of" the foreign producer. Payment went directly from the Ohio manufacturer to the foreign producer and credit was extended by the foreign company.

In the present cases the appellants contracted with companies which extended their own credit and received all payments for their own accounts. The precise relationship between the domestic companies and the foreign mills (or brokers in some cases) does not clearly appear on the records, but it can be discerned that the domestic concerns entered into separate and distinct contracts with the foreign sellers.

There are two transactions involved in the *Kenwal Case* that differ from the other transactions in these consolidated cases. Kenwal entered into a joint venture with M. W. Zack Metal Company and the Donovan Wire & Iron Company. Zack and Donovan each ordered an entire shipload of steel through intermediaries, with the agreement that Kenwal would participate by taking half of each shipload. For convenience, all of the documents were made in the name of Zack and Donovan. We see no reason to

treat these transactions any differently than the other sales involved in these consolidated cases.

In determining who is the "efficient cause" of importatioon in the constitutional sense, we must look beyond matters of form to the substance of the transaction. Perhaps the most significant substantive matter which the Supreme Court emphasized in *Hooven, supra,* 661, was the fact that performance of the contract called for, and necessarily restulted in, importation of the merchandise. Appellant's contracts with the domestic intermediaries specified that the steel was to be shipped from a foreign country or was already en route directly to the appellants. Performance of these contracts then, as in *Hooven,* called for and necessarily resulted in, importation. In our opinion the transactions in these cases fall within the scope of the Hooven decision.

The orders of the tax commission are vacated.

APPENDIX B

State of Michigan

Before the Michigan State Tax Commission

At a meeting of the Michigan State Tax Commission held on the 26th day of January, 1967 at Lansing, Michigan

IN RE PETITION No. 22-5495 of the Detroit Board of Assessors, City of Detroit, County of Wayne, State of Michigan, received on June 30, 1966, requesting to place upon the assessment roll property omitted therefrom, consisting of personal property in the form of steel inventory, belonging to Contractors Steel Company, 9353 Freeland, Detroit, Michigan.

The petitioner, the Detroit Board of Assessors contends that personal property was erroneously omitted from the assessment rolls and the same should be placed upon the rolls in accordance with the provisions of Sec. 211.152 C.L. of Mich. 1948.

The Commission accepted the petition for examination and caused an investigation to be made to determine the assessable value of the personal property and to determine to whom the property should be assessed. A hearing was held on November 22, 1966 at Detroit, Michigan, at whiche hearing the taxpayer of the property in question was represented by counsel.

After consideratdon of the data presented at the hearing and the examination and investigation of the Commission's staff along with other written documents and exhibits of the taxpayer and the Detroit Board of Assessors the Commission finds:

1. The Detroit Board of Assessors in Petition No. 22-5495 asks the current assessment of $34,860 to be raised to $93,140 because of additional value revealed in an audit by a member of the Board of Assessors staff.

2. The investigation revealed that the issue involved in this dispute is not one of valuation but is a legal issue concerning the assessability of certain imported steel inventories. The city of Detroit claims that the steel in question has been purchased by the taxpayer from an importer and thereby has entered the channels of trade and become subject to ad valorem taxation. The taxpayer on the other hand claims that they are the "importers" and as such the steel in question retains its immunity from ad valorem taxation as an "imported product" under Article I, Section 10, Chapter 2 of the United States Constitution which reads:

> "No State shall, without the consent of the Congress, lay any imposts or duties on Imports or Exports . . ."

3. Taxable property, both real and personal in the city of Detroit are assessed at a significant range of from 41% to 56% of their true cash value, or a properly weighted mathematical average for the local unit of $45.25% which is sustained by an equalization study made by the Commission in 1963, which data has been kept routinely current by the Commission and checked in the field by the Commission's staff.

4. That where property was omitted from the assessment roll erroneously it should be placed upon the assessment roll as provided in Sec. 211.152 C. L. of Mich. 1948.

After these findings of facts and the consideration of all the information contained therein the Commission still has reservations. On the basis of the documents, exhibits, etc, there are doubts as to whether or not the goods in question are "imports" under Article I, Section 10, Chapter 2 of the United States Constitution. Taxation is the rule and there is a presumption that property is taxable unless it clearly appears that constitutional provisions or statutes grant an immunity from taxation. The burden of proof to establish immunity from ad valorem taxation rests on the taxpayer. The Commission is of the opinion that the taxpayer has failed to prove its claim of immunity from taxation based on the theory of imported goods. Therefore, the petition of the Board of Assessors of the city of Detroit is granted with reservation as to the final assessed valuation. This reservation is based upon the utilization of the correct assessment ratio to apply to true cash value in order to achieve the correct assessed valuation. It is determined in the opinion of the Commission that the undisputed true cash value of the property involved is $186,270 and the assessment level is 45.25% of true cash value. Therefore, appellants' assessment should be $84,300. Since the proposed assessment per Petition No. 22-5495 is $93,140 it is clearly apparent that the proposed assessment is signnificantly above and is not in accordance to the true cash value reduced to the local assessment level and the true cash value of all other real and personal property within the city of Detroit, reduced to such assessment level. The Commission fully appreciates the fact that the question presented in the petition is of a legal nature. We readily acknowledged that the courts are best adapted to resolving the legal questions involved just as the Commission believes itself to be the most proficient in questions of valuation. Should the taxpayer be dissatisfied and seek further relief available under the law, the Commission

directs his attention to Sec. 211.53 of the C.L. of Mich. 1948, or in an action for a declaration of rights.

WHEREFORE, it is hereby ordered that the amount of $84,300 be placed upon the assessment roll as the true and lawful value of such property.

/s/ Robert L. Purnell, Chairman

/s/ R. Gerald Barr, Commissioner

/s/ Ward G. Dexel, Commissioner

February 1, 1967.

APPENDIX C

SUPREME COURT ORDER DENYING APPLICATION FOR LEAVE TO APPEAL AND STAY OF PROCEEDINGS

At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 20th day of March in the year of our Lord one thousand nine hundred and sixty-nine.

Present the Honorable Thomas E. Brennan, Chief Justice, John R. Dethmers, Harry F. Kelly, Eugene F. Black, Thomas M. Kavanagh, Paul L. Adams, Thomas G. Kavanagh, Associate Justices.

On order of the Court (T. G. Kavanagh, J., not participatinng), the application for leave to appeal is considered, and the same is hereby Denied, as plaintiffs and appellants have failed to persuade the Court that they have a meritorious basis for appeal or that the decision of the Court of Appeals was clearly erroneous. Plaintiffs' and appellants' request for a stay of proceedings is Denied, as thereby being moot.

State of Michigan—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 20th day of March in the year of our Lord one thousand nine hundred and sixty-nine.

/s/ Harold Hoag,
Deputy Clerk.

(Seal)

APPENDIX D

SUPREME COURT ORDER DENYING STAY OF ENFORCEMENT

As a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 19th day of May in the year of our Lord one thousand nine hundred and sixty-nine.

Present the Honorable Thomas E. Brennan, Chief Justice, John R. Dethmers, Harry F. Kelly, Eugene F. Black, Thomas M. Kavanagh, Paul L. Adams, Thomas G. Kavanagh, Associate Justices.

On order of the Court, the motion by the city of Detroit and the Board of Assessors of the city of Detroit, plaintiffs and appellants, to stay enforcement of an order of this Court pending petition for certiorari to the Supreme Court of the United States is considered, and the same is hereby Denied, as no immediate emergency has been alleged or shown.

State of Michian—ss.

I, Donald F. Winters, Clerk of the Supreme Court of State of Michigan, do hereby certify that the foregoing is a true and correct copy or an order entered in said court and said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 21st day of May in the year of our Lord one thousand nine hundred and sixty-nine.

/s/ Donald F. Winters.

(Seal) Clerk.

SUPREME COURT, U. S.
Office Supreme Court, U.S.
FILED
JUL 22 1969
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 280

CITY OF DETROIT, a municipal corporation,
BOARD OF ASSESSORS OF THE CITY OF DETROIT,
Petitioners-Plaintiffs,
MICHIGAN STATE TAX COMMISSION,
Appellant,
v.
AMBASSADOR STEEL COMPANY, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS, DIVISION I

BRIEF FOR RESPONDENT BARSTEEL CORPORATION IN OPPOSITION AND APPENDIX

CONCURRENCE IN BRIEF BY RESPONDENTS CRAFT STEEL & SUPPLY COMPANY, INC. AND KENWAL PRODUCTS CORPORATION

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ON PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS, DIVISION I

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CONCURRENCE IN BRIEF BY RESPONDENTS CRAFT STEEL & SUPPLY COMPANY, INC. AND KENWAL PRODUCTS CORPORATION

OPINIONS BELOW

The petitioners have failed to provide the court with a copy of the unreported order of the Michigan Supreme Court, dated March 20, 1969, denying petitioners' application for leave to appeal. A copy of said order is printed in Appendix A attached hereto. In addition, a copy of the unreported opinion of the Michigan State Tax Commission, dated February 3, 1967, in this respondent's case was not appended to the petition and is therefore printed in Appendix B attached hereto.

JURISDICTION

On July 3, 1969, the undersigned received notice from the attorneys for petitioners, pursuant to Supreme Court Rule 21(2), that a petition for a writ of certiorari in this case was filed on the 25th day of June, 1969. Since the judgment of the Michigan Supreme Court denying the petitioners' application for leave to appeal was entered on March 20, 1969, it is obvious that the petition was filed more than 90 days after the entry of judgment. The time for applying for the writ was not extended. Therefore, the petition is untimely, and this Court does not have jurisdiction to entertain it. 28 U.S.C. §2101(c).

The petitioners' attorneys have filed a "Supplemental Petition", admitting the petition to be untimely but attempting to justify their laches. Such "Supplemental Petition" should not be given any weight by this Court in that it patently shows their lack of due diligence in not filing the petition in time, and, in any event, an attempted justification of laches cannot cure the fatal jurisdictional defect of an untimely filing.

QUESTIONS PRESENTED

The petition for certiorari sets out that the decision below presents three questions for review. Respondent respectfully submits that the only question involved is the following:

> Was respondent the importer, in the constitutional sense, of certain foreign steel held by it on December 31, 1965, in the original unbroken packages, thereby causing such steel to be immune from ad valorem taxa-

tion by reason of Article I, Section 10, Clause, 2, of the United States Constitution?

The Michigan Court of Appeals answered this question, "Yes".

The Michigan Supreme Court, in refusing to review said decision, impliedly answered this question, "Yes".

The respondent contends the answer should be "Yes".

STATEMENT

The pertinent facts relating to the particular case involving this respondent are not set forth in the petition and are therefore presented herein.

(a) Chronology of Events

On December 31, 1965, the tax assessment date in the State of Michigan, respondent Barsteel Corporation owned and operated a steel warehouse in the City of Detroit, purchasing steel primarily in the forms of coils of different gauges, or thicknesses, and widths and thereafter slitting or cutting such steel, at the time of sale to its customers, pursuant to the particular customer's order.

Included in respondent's inventory on the December 31, 1965 assessment date were coils of steel emanating from three sources: (i) domestic steel mills; (ii) Japanese steel mills; and (iii) European steel mills. The respondent on its personal property statement, filed under oath with the City of Detroit, claimed immunity from taxation only with respect to unbroken coils of steel emanating from the foreign sources and it attached a detailed schedule documenting the particular coils of steel involved.

The Board of Assessors of the City of Detroit, one of the petitioners herein, refused to honor respondent's claim of immunity, and assessed such imported coils of steel in full. Respondent duly appealed such assessment to the City of Detroit Board of Review which ruled that such imported steel was entitled to immunity under the United States Constitution and reduced the assessment accordingly.

The petitioners appealed the Board of Review's determination to the Michigan State Tax Commission. After auditing respondent's records in detail, petitioners conceded that the respondent was the "importer" of the Japanese steel (acquired by respondent in essentially the same fashion as the European steel) but still insisted that 50% of it was subject to tax (for the reason that the petitioners considered respondent to be a "manufacturer" and 50% of said steel was deemed to be required for respondent's current operational needs).

On February 3, 1967, the Michigan State Tax Commission held that (i) the entire Japanese steel was immune from taxation, and (ii) the entire European steel was subject to taxation (Appendix B).

The respondent duly appealed said decision of the Michigan State Tax Commission (with respect to the taxation of the European steel) to the Michigan Court of Appeals, and its case was consolidated with the ten other respondents involved herein. (The petitioners did not appeal the decision granting full immunity to the Japanese steel.) On December 2, 1968, the Michigan Court of Appeals vacated the order of the Michigan State Tax Commission and held said imported steel to be immune from personal property taxation.

The petitioners and the Michigan State Tax Commission filed an application for leave to appeal the aforesaid decision to the Michigan Supreme Court, which court denied

their request for the stated reason that the petitioners "failed to persuade the Court that they have a meritorious basis for appeal or that the decision of the Court of Appeals was clearly erroneous." (See Appendix A.)

(b) Substantive Facts

All of the respondent's purchase orders for the European steel were placed with Nimpex International, Inc., a steel brokerage company with offices in New York, which acted in an agency relationship concerning the transactions in question. Nimpex was not the owner of any of the steel at the time respondent placed its orders. Only *after* it received an order from respondent did Nimpex place its orders with the European mills in fulfillment of the special order of respondent. Although respondent was familiar with the European mills which produced said steel, its personnel having visited and inspected the mills involved, neither respondent nor any other United States company could purchase directly from such mills because the mills would sell to the United States companies only through Nimpex. However, mill testing certificates, packing certificates, and markings on the coils all clearly indicated (*prior* to the steel being placed aboard the ship in the foreign port) that the steel in question was specifically destined for respondent in Detroit, Michigan.

The records in this case unequivocally show the time sequence of pertinent events concerning a transaction with Nimpex to be: *first,* a purchase order by respondent ordering specific gauges and widths of steel coils, and *second,* fulfillment of the order by the European mill as evidenced by packing certificates indicating certain markings on the coils to identify the steel destined for respondent. *In no instance did respondent purchase steel through Nimpex after the steel left the European port.*

ARGUMENT

(a) The Court Does not Have Jurisdiction to Entertain the Petition.

As stated above, and as acknowledged by petitioners in their "Supplemental Petition" filed with this Court, the petition for writ of certiorari was filed more than 90 days after the judgment of the Michigan Supreme Court.

That a petition for a writ of certiorari must be filed within 90 days after entry of judgment (unless the time be extended by a Justice of this court for a period not to exceed 60 days) is not open to question, 28 U.S.C. §2101(c). If a petition is untimely, the court does not have jurisdiction to entertain it, irrespective of whether the record may show a proper case for its allowance. *Rust Land & Lumber Co. v. Jackson,* 250 U.S. 71, 39 S. Ct. 424, 63 L.Ed. 850 (1919).

(b) There Are No Special and Important Reasons to Grant the Petition

In the event the court should decide it has jurisdiction to entertain the petition, such petition should not be granted since there are no special and important reasons therefor.

As noted above, the Michigan Supreme Court, the highest court in the state, did not consider that petitioners had a meritorious basis for appeal of the decision of the Michigan Court of Appeals. The argument made by petitioners concerning the pending litigation in the lower courts of the state did not impress that court, nor should it have any impression on this court. Although, as pointed out by petitioners, an ever-increasing volume of foreign goods claimed immune are arriving in ports on the Great Lakes, the volume of pending litigation is only within the City of

Detroit and does not involve other taxing jurisdictions within the State of Michigan or elsewhere.

It is significant that the Michigan State Tax Commission, which is the state administrative body charged with the duty of supervising the administration of property tax laws of the State and which was a party in this case in the Michigan Court of Appeals and appellant in the Michigan Supreme Court, did not join in the petition filed herein. Therefore, one must assume that said Michigan State Tax Commission does not view this matter as having the same importance as do the petitioners, even though the Commission is involved with all taxing jurisdictions in the State, and not just the City of Detroit. Moreover, it would seem to be a fair assumption that the Attorney General of the State of Michigan, who represents the Michigan State Tax Commission, considers that the issues were properly resolved against the petitioners by the Michigan Court of Appeals and the Michigan Supreme Court.

(c) The Decision Below is in Accord With Applicable Decisions of This Court.

The decision of the Michigan Court of Appeals straightforwardly and correctly applied the principles of *Hooven & Allison Co. v. Evatt*, 324 U.S. 652, 65 S. Ct. 870, 89 L.Ed. 1252 (1945), to the facts involved herein.

The plain meaning of the *Hooven & Allison* case is that the "importer" in the constitutional sense is the party who is the efficient cause of the importation. As stated by this court (324 U.S. at 662-663):

> "For the purpose of determining whether petitioner was the importer in the constitutional sense, it is immaterial whether the title to the merchandise imported vested in him who caused it to be brought to this country at the time of shipment or only after

> its arrival here. . . . For in determining the meaning and application of the constitutional provision, we are concerned with matters of substance not of form. When the merchandise is brought from another country to this, the extent of its immunity from state taxation turns on the essential nature of the transaction, considered in the light of the constitutional purpose, and not on the formalities with which the importation is conducted or on the technical procedures by which it is effected. . . ."

The fact that *Hooven & Allison* involved a manufacturer rather than a wholesaler; as in the case of respondent, is a distinction without a difference and certainly is not a basis for distinguishing that case as the petitioners would have us believe.

Whereas the petitioners stress the minor and irrelevant distinctions between our case and *Hooven & Allison,* as a matter of fact, found to be so by the Court of Appeals, the factual similarities between the cases make them, for all practical purposes, indistinguishable.

Comparing the salient facts in *Hooven & Allison* to our present case, we find that both the Hooven & Allison Company and respondent contract for their requirements of the property *before* its shipment to this country, and sometimes even *before* the property is produced in the foreign country; both companies negotiate for the purchase of the property with brokers located in the United States; the purchase price paid by both companies includes charges for ocean freight, insurance, and customs; both companies made payment to the broker, not to the foreign producer; in both cases the broker clears the property through customs; in both cases the goods are specifically marked when they leave the foreign port to identify them as being destined for the taxpayer-purchaser; in both cases there is no retention of a security title by the foreign seller, the broker,

or any intervening banker, to secure payment by the taxpayer-purchaser of the purchase price; in both cases the purpose and necessary consequence of the importation are to supply the taxpayer-purchaser with the merchandise; in both cases the risk of loss from change in market value is on the taxpayer-purchaser; *in both cases but for the taxpayer-purchaser's contracts of purchase, the merchandise would not have been brought into the United States;* in both cases the performance of the taxpayer-purchaser's contracts of purchase call for, and necessarily result in, importation; thus, in both cases the taxpayer-purchaser's contracts of purchase are the inducing and efficient cause of importing the merchandise into the United States.

It must be reiterated that *in no instance did respondent claim any steel to be immune which it purchased after said steel left the foreign country,* and the record in our case clearly establishes this to be the fact.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

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961-3360.

July 18, 1969.

CONCURRENCE IN BRIEF BY RESPONDENT CRAFT STEEL & SUPPLY COMPANY, INC.

Craft Steel & Supply Company, Inc. a respondent herein, concurs in the Brief of Barsteel Corporation in that its position herein is substantially similar to that of Barsteel Corporation.

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HARRY M. NAYER,
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CONCURRENCE IN BRIEF BY RESPONDENT KENWAL PRODUCTS CORPORATION

Kenwal Products Corporation, being the appellant in case number 3323 before the Michigan Court of Appeals joins with Barsteel Corporation in the filing of this Brief.

The factual record below in the case of respondent, Kenwal Products Corporation consists solely of written exhibits. The principal exhibit is the City of Detroit's own exhibit, designated Exhibit A. Respondent Kenwal Products Corporation has two exhibits, namely, Exhibits No. 1 and 2, the former being a letter of Nichimen Co., Inc., 60 Broad Street, New York, New York, and the latter a letter of The Donovan Wire & Iron Co., of Toledo, Ohio, respectively, as to the existence of joint ventures. There are four separate transactions in the Kenwal case, which for the

sake of reference are referred to as Okaya, Zack, Donovan and Nimpex.

The City, in its exhibit A conceded that Kenwal was the importer in the Okaya transaction. On the first page of the City's Exhibit A, the heading states: "Kenwal Products Corp.—Imported Steel—Considered Original Importer."

The underlying facts were the same in the Zack transaction and Donovan transaction as in the Okaya transaction. The only formal difference was that the paperwork appeared in the names of Zack and Donovan. However, Kenwal, by its Exhibits No. 1 and 2 established joint ventures in these two cases. The validity of these joint ventures is expressly ruled on by the Michigan Court of Appeals in its opinion in 165 N. W. 2d. 875 (1968), a copy of which is filed as Appendix A to the Petition For Certiorari, and said joint ventures are not here contested by the petitioners. In view of the concession by the petitioners in the Okaya transaction and the establishment of the joint ventures in the Zack and Donovan transactions, there is no issue of any nature for petitioners to raise as to the said Okaya, Zack and Donovan transactions.

As to the fourth transaction, the so-called Nimpex transaction, which, in the Kenwal case is confined to European steel, this respondent's position is identical with that of Barsteel Corporation with whom this respondent is joining in the filing of this brief.

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APPENDIX A

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 20th day of March in the year of our Lord one thousand nine hundred and sixty-nine.

Present the Honorable Thomas E. Brennan, Chief Justice, John R. Dethmers, Harry F. Kelly, Eugene F. Black, Thomas M. Kavanagh, Paul L. Adams, Thomas G. Kavanagh, Associate Justices.

On order of the Court (T. G. Kavanagh, J., not participating), the application for leave to appeal is considered, and the same is hereby DENIED, as plaintiffs and appellants have failed to persuade the Court that they have a meritorious basis for appeal or that the decision of the Court of Appeals was clearly erroneous. Plaintiffs' and appellants' request for a stay of proceedings is DENIED, as thereby being moot.

State of Michigan—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 20th day of March in the year of our Lord one thousand nine Hundred and sixty-nine.

Harold Hoag,
Deputy Clerk.

APPENDIX B

STATE OF MICHIGAN

BEFORE THE MICHIGAN STATE TAX COMMISSION

At a meeting of the Michigan State Tax Commission held on the 26th day of January, 1967 at Lansing, Michigan

IN RE PETITION NO. 15-1365 of the Detroit Board of Assessors, City of Detroit, County of Wayne, State of Michigan, received on June 30, 1966, requesting to place upon the assessment roll property omitted therefrom, consisting of personal property in the form of steel inventory, belonging to Barsteel Corporation, 13710 Mt. Elliott, Detroit, Michigan.

The petitioner, the Detroit Board of Assessors, contends that personal property was erroneously omitted from the assessment rolls and the same should be placed upon the rolls in accordance with the provisions of Sec. 211.152-C. L. of Mich. 1948.

The Commission accepted the petition for examination and caused an investigation to be made to determine the assessable value of the personal property and to determine to whom the property should be assessed. A hearing was held on November 22, 1966 at Detroit, Michigan, at which hearing the taxpayer of the property in question was represented by counsel.

After consideration of the data presented at the hearing and the examination and investigation of the Commission's staff along with other written documents and exhibits of the taxpayer and the Detroit Board of Assessors the Commission finds:

1. The Detroit Board of Assessors in Petition No. 15-1365 asks the current assessment of $623,440 to be raised to $1,004,380 because of additional value revealed in an audit by a member of the Board of Assessors staff. However, this original request for revision was amended so that the raise asked for by the Detroit Board of Assessors was $961,680.

2. The investigation revealed that the issue involved in this dispute is not one of valuation but is a legal issue concerning the assessability of certain imported steel inventories. The city of Detroit claims that the steel in question has been purchased by the taxpayer from an importer and thereby has entered the channels of trade and become subject to ad valorem taxation. The city pointed out that it was determined in the audit that inventory costing $267,101 could be sustained by the documents as being imported by the taxpayer. The city further claims that since the taxpayer processed most of its materials for resale it was estimated at 50% or $133,550 of this inventory was for current operational needs and included in the requested assessment raise. The taxpayer on the other hand claims that they are the "importer" and as such the steel in question retains its immunity from ad valorem taxation as an "imported product" under Article I, Section 10, Chapter (sic) 2 of the United States Constitution which reads:

> "No State shall, without the consent of the Congress, lay any imports (sic) or duties on Imports or Exports . . ."

3. Taxable property, both real and personal in the city of Detroit are assessed at a significant range of from 41% to 56% of their true cash value, or a properly weighted mathematical average for the local unit of 45.25% which is sustained by an equalization study made by the Commission in 1963, which data has been kept routinely current

by the Commission and checked in the field by the Commission's staff.

4. That where property was omitted from the assessment roll erroneously it should be placed upon the assessment roll as provided in Sec. 211.152 C. L. of Mich. 1948.

After these findings of facts and the consideration of all the information contained therein the Commission still has reservations. On the basis of the documents, exhibits, etc., there are doubts as to whether or not the goods in question are "imports" under Article I, Section 10, Chapter (sic) 2 of the United States Constitution. Taxation is the rule and there is a presumption that property is taxable unless it clearly appears that constitutional provisions or statutes grant an immunity from taxation. The burden of proof to establish immunity from ad valorem taxation rests on the taxpayer. The Commission is of the opinion that the taxpayer has failed to prove its claim of immunity from taxation based on the theory of imported goods, except in the case of the $367,101 which the city of Detroit readily admits as being imported by the taxpayer. Therefore, the petition of the Board of Assessors of the city of Detroit is granted with reservations as to the final assessed valuation. These reservations are based upon the utilization of the correct assessment ratio to apply to true cash value in order to achieve the correct assessed valuation, along with the granting of immunity from taxation for the full amount of the inventory imported by the taxpayer. It is determined in the opinion of the Commission that the undisputed true cash value of the property involved is $1,789,810 and the assessment level is 45.25% of true cash value. Therefore, appellant's assessment should be $809,900. Since the proposed assessment per Petition No. 15-1365 is $1,004,380 it is clearly apparent that the proposed assessment is significantly above and is not in accordance

to the true cash value reduced to the local assessment level and the true cash value of all other real and personal property within the city of Detroit, reduced to such assessment level. The Commission fully appreciates the fact that the question presented in the petition is of a legal nature. We readily acknowledge that the courts are best adapted to resolving the legal questions involved just as the Commission believes itself to be the most proficient in questions of valuations. Should the taxpayer be dissatisfied and seek further relief available under the law, the Commission directs his attention to Sec. 211.53 of the C. L. of Mich. 1948, or in an action for a declaration of rights.

WHEREFORE, it is hereby ordered that the amount of $809,900 be placed upon the assessment roll as the true and lawful value of such property.

Robert L. Purnell, Chairman
R. Gerald Barr, Commissioner
Ward G. Dexel, Commissioner

I hereby certify that this is a true copy of the order of the State Tax Commission on file in the State Tax Commission office as provided by Act 147, P.A. 1960.

Edward W. Kane,
Secretary.

February 3, 1967